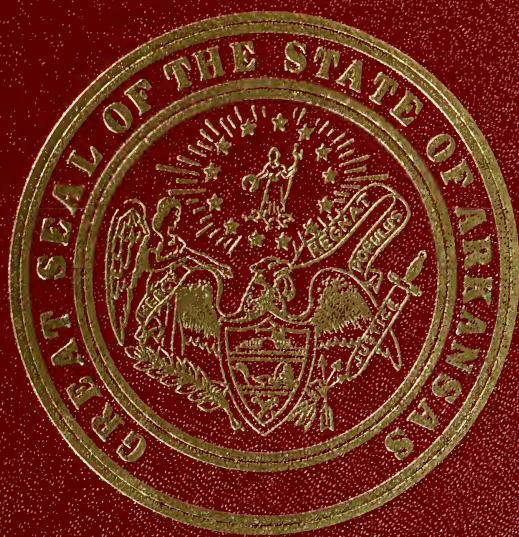


ARKANSAS CODE OF 1987 ANNOTATED

OFFICIAL EDITION



VOLUME 26A • TITLE 26, CH. 1-33



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ARKANSAS CODE OF 1987 ANNOTATED



VOLUME 26A 2012 Replacement TITLE 26: TAXATION (CHAPTERS 1-33)

Prepared by the Editorial Staff of the Publisher

Under the Direction and Supervision of the
ARKANSAS CODE REVISION COMMISSION

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Sources

This volume contains legislation enacted by the Arkansas General Assembly through the 2012 Fiscal Session. Annotations are to the following sources:

Arkansas Supreme Court and Arkansas Court of Appeals Opinions through 2012 Ark. LEXIS 240 (May 17, 2012) and 2012 Ark. App. LEXIS 466 (May 16, 2012).

Federal Supplement through May 21, 2012.

Federal Reporter 3d Series through May 21, 2012.

United States Supreme Court Reports through May 21, 2012.

Bankruptcy Reporter through May 21, 2012.

Arkansas Law Notes through the 2008 Edition.

Arkansas Law Review through Volume 61, p. 787.

University of Arkansas at Little Rock Law Review through Volume 30, p. 267.

ALR 6th through Volume 64, p. 655.

ALR Fed. 2d through Volume 46, p. 473.

Titles of the Arkansas Code

- | | |
|---|---|
| 1. General Provisions | 16. Practice, Procedure, and Courts |
| 2. Agriculture | 17. Professions, Occupations, and Businesses |
| 3. Alcoholic Beverages | 18. Property |
| 4. Business and Commercial Law | 19. Public Finance |
| 5. Criminal Offenses | 20. Public Health and Welfare |
| 6. Education | 21. Public Officers and Employees |
| 7. Elections | 22. Public Property |
| 8. Environmental Law | 23. Public Utilities and Regulated Industries |
| 9. Family Law | 24. Retirement and Pensions |
| 10. General Assembly | 25. State Government |
| 11. Labor and Industrial Relations | 26. Taxation |
| 12. Law Enforcement, Emergency Management, and Military Affairs | 27. Transportation |
| 13. Libraries, Archives, and Cultural Resources | 28. Wills, Estates, and Fiduciary Relationships |
| 14. Local Government | |
| 15. Natural Resources and Economic Development | |

User's Guide

Differences in language, subsection order, punctuation, and other variations in the statute text from legislative acts, supplement pamphlets, and previous versions of the bound volume, are editorial changes made at the direction of the Arkansas Code Revision Commission pursuant to the authority granted in § 1-2-303.

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of the bound Volume 1 of the Code.

TITLE 26

TAXATION

(CHAPTERS 34-51 IN VOLUME 26B; CHAPTERS 52-57 IN
VOLUME 27A; CHAPTERS 58-82 IN VOLUME 27B)

SUBTITLE 1. GENERAL PROVISIONS

CHAPTER.

1. GENERAL PROVISIONS.
2. PENALTIES AND OFFENSES GENERALLY.
3. PROPERTY SUBJECT TO TAXATION AND EXEMPTIONS.
4. TAX INCENTIVES.
5. MULTISTATE TAX COMPACT.
- 6-15. [RESERVED.]

SUBTITLE 2. ADMINISTRATION OF STATE TAXES

CHAPTER.

16. GENERAL PROVISIONS. [RESERVED.]
17. REVENUE DIVISION.
18. STATE TAX PROCEDURE GENERALLY.
19. ELECTRONIC FUNDS.
20. UNIFORM SALES AND USE TAX ADMINISTRATION ACT.
21. STREAMLINED SALES TAX ADMINISTRATIVE ACT.
22. [RESERVED.]

SUBTITLE 3. ADMINISTRATION OF LOCAL TAXES

CHAPTER.

23. TAXPAYERS.
24. ARKANSAS PUBLIC SERVICE COMMISSION.
25. LEVY OF TAXES.
26. ASSESSMENT OF TAXES.
27. EQUALIZATION OF ASSESSMENTS.
28. TAX BOOKS AND RECORDS.
- 29-33. [RESERVED.]

SUBTITLE 4. COLLECTION AND ENFORCEMENT

CHAPTER.

34. GENERAL PROVISIONS.
35. COLLECTION AND PAYMENT OF TAXES GENERALLY.
36. COLLECTION OF DELINQUENT TAXES.
37. SALE OR FORFEITURE OF REAL PROPERTY.
38. CONFIRMATION OF TAX SALES.
39. SETTLEMENT OF MONEYS COLLECTED.
- 40-49. [RESERVED.]

SUBTITLE 5. STATE TAXES

CHAPTER.

50. GENERAL PROVISIONS.

CHAPTER.

- 51. INCOME TAXES.
- 52. GROSS RECEIPTS TAX.
- 53. COMPENSATING OR USE TAXES.
- 54. CORPORATE FRANCHISE TAXES.
- 55. MOTOR FUELS TAXES.
- 56. SPECIAL MOTOR FUELS TAXES.
- 57. STATE PRIVILEGE TAXES.
- 58. SEVERANCE TAXES.
- 59. ESTATE TAXES.
- 60. REAL PROPERTY TRANSFER TAX.
- 61. TAX ON TIMBERLANDS AND RANGELANDS.
- 62. ALTERNATIVE FUELS TAX.
- 63. ARKANSAS SPECIAL EXCISE TAXES.
- 64-71. [RESERVED.]

SUBTITLE 6. LOCAL TAXES

CHAPTER.

- 72. GENERAL PROVISIONS. [RESERVED.]
- 73. TAXATION GENERALLY.
- 74. COUNTY SALES AND USE TAXES.
- 75. MUNICIPAL SALES AND USE TAXES.
- 76. COUNTY PRIVILEGE AND LICENSE TAXES.
- 77. MUNICIPAL OCCUPATIONAL TAXES AND LICENSES.
- 78. COUNTY AND MUNICIPAL MOTOR VEHICLE TAX.
- 79. COUNTY ROAD TAX.
- 80. SCHOOL DISTRICT TAXES.
- 81. MULTICOUNTY AIRPORT AND RIVERPORT FINANCING ACT.
- 82. LOCAL SALES AND USE TAX ECONOMIC DEVELOPMENT PROJECT FUNDING ACT.

SUBTITLE 1. GENERAL PROVISIONS**CHAPTER 1****GENERAL PROVISIONS**

SECTION.

26-1-101. Definitions.

Cross References. Illegal exactions, Ark. Const., Art. 16, § 13.

Effective Dates. Acts 1869 (Adj. Sess.), No. 47, § 4: effective on passage.

Acts 1873, No. 124, § 200: effective on passage.

Acts 1879, No. 76, § 5: effective on passage.

Acts 1883, No. 114, § 226: effective on passage.

Acts 1917, No. 263, § 4: approved Mar. 17, 1917. Emergency declared.

Acts 1927, No. 129, § 38: approved Mar. 9, 1927. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage."

Acts 1975, No. 928, § 1: effective simultaneously with the Arkansas Criminal Code on Jan. 1, 1976.

26-1-101. Definitions.

As used in this act, unless the context otherwise requires:

(1) "Credits" means the excess of the sum of all legal claims and demands, whether for money or other valuable things, or for labor or service due or to become due, to the person liable to pay taxes thereon, including deposits in banks or with persons in or out of this state, when added together, estimating every claim or demand at its true value in money, over and above the sum of legal bona-fide debts owing by the person. In making up the sum of the debts owing, there shall be taken into account no obligation to any mutual insurance company; nor any unpaid subscription to the capital stock of any joint-stock company; nor any subscription for any religious, scientific, literary, or charitable purpose; nor any acknowledgment of any indebtedness, unless founded on some consideration actually received and believed at the time of making, the acknowledgment to be a full consideration therefor; nor any acknowledgment of debt made for the purpose of diminishing the amount of credits to be listed for taxation; nor any greater amount or portion of any liability as surety than the person required to make the statement of the credits believes that the surety is in equity bound and will be compelled to pay or contribute;

(2) "Investment in bonds" means all moneys invested in bonds of whatever kind or certificates of indebtedness commonly called scrip, whether issued by incorporated or unincorporated companies, towns, cities, townships, counties, states, or other corporations, held by persons residing in this state, either by themselves or by others for them, whether for themselves or as guardians, trustees, or agents;

(3) "Investment in stocks" means all moneys invested in public stocks of this or any other state or in any association, corporation, joint-stock company, or otherwise, the stock or capital of which is or may be divided into shares, which are transferable by each owner without the consent of the other partners or stockholders, for the taxation of which no special provision is made by this title, held by persons residing in this state, either for themselves or as guardians, trustees, or agents, or by others for them;

(4)(A) "Money" means gold and silver coin, bank notes of solvent banks in actual possession, and every deposit which the person owning, holding in trust, or having the beneficial interest therein is entitled to withdraw in money on demand, within this state or elsewhere, provided it is subject to order.

(B) All citizens of this state shall, when they give to the county assessor a list of their personal property, moneys, and credits, state under oath whether they have any deposits or balances on accounts, or otherwise, and the amount of the deposits, balance, or otherwise on account;

(5) "Oath" means an oath or affirmation;

(6) "Pensions" receivable from the United States or from any state, salaries or payments excepted, shall not mean annuities;

(7) "Person" means a firm, company, or corporation;

(8) "Personal property" means:

(A) Every tangible thing being the subject of ownership, whether animate or inanimate, other than money and not forming a part of any parcel of real property as defined; and

(B) The capital stock, undivided profits, and all other means not forming part of the capital stock of every company, whether incorporated or unincorporated, and every share, portion, or interest in the stock, profits, or means, by whatsoever name it may be designated, inclusive of every share or portion, right, or interest, either legal or equitable, in and to every ship, vessel, or boat of whatsoever name and description used or designed to be used exclusively or partially in navigating any of the waters within or bordering on this state, whether the ship, vessel, or boat shall be within the jurisdiction of this state or elsewhere and whether it shall have been enrolled, registered, or licensed at any county collector's office or within any county collector's district of this state, or not;

(9) "Real property and lands" means not only the land itself, whether laid out in town lots or otherwise, with all things therein contained, but also all buildings, structures, improvements, and other fixtures of whatever kind thereon and all rights and privileges belonging or in anywise appertaining thereto; and

(10) "Town" or "city" means all cities or towns, incorporated or not incorporated, and all blocks or lots or parts thereof, assessed for taxation as such, whether they are situated in an incorporated city or town, or not.

History. Acts 1883, No. 114, §§ 1, 75, p. 199; C. & M. Dig., §§ 9792, 9939; Pope's Dig., §§ 13358, 13723; A.S.A. 1947, §§ 84-101, 84-102.

A.C.R.C. Notes. Pursuant to Arkansas Constitution, Amendments 57 and 71, and § 26-3-302, intangible personal property and "items of household furniture and furnishings, clothing, appliances, and other personal property used within the home, if not held for sale, rental, or other commercial or professional use", are exempt from ad valorem taxes. Additional ad valorem tax exemptions for public property, churches, cemeteries, schools, libraries, charities, and textile mills are found in Arkansas Constitution, Article 16, § 5(b), and Arkansas Constitution, Amendment 12. See also § 26-3-301 et seq.

Meaning of "this act". Acts 1883, No. 114, codified as §§ 14-15-201, 14-15-505, 16-20-106, 16-92-113 [repealed], 16-92-114, 16-92-115 [repealed], 16-96-401, 21-

6-305, 25-16-517, 26-1-101, 26-2-101, 26-2-103, 26-2-108, 26-3-201, 26-3-204, 26-3-301, 26-25-101 — 26-25-103, 26-25-105, 26-26-702 — 26-26-704, 26-26-714, 26-26-716, 26-26-717, 26-26-903 — 26-26-909, 26-26-914, 26-26-1001, 26-26-1102, 26-26-1107, 26-26-1202 — 26-26-1205, 26-26-1505, 26-28-101, 26-28-103 — 26-28-108, 26-28-110, 26-28-111, 26-34-101 — 26-34-103, 26-34-108, 26-35-201, 26-35-301 — 26-35-303, 26-35-401, 26-35-402, 26-35-503, 26-35-504, 26-35-603, 26-35-604, 26-35-901, 26-35-1001 — 26-35-1003 [repealed], 26-35-1004, 26-36-202, 26-36-204, 26-36-206 — 26-36-209, 26-36-211, 26-37-106, 26-37-206, 26-37-208, 26-37-209, 26-37-305, 26-37-307, 26-38-106, 26-38-107, 26-39-204, 26-39-205 [repealed], 26-39-206 — 26-39-221, 26-39-302 — 26-39-305 [repealed], 26-39-403, 26-39-406, 26-39-501 — 26-39-502, 26-39-503 — 26-39-509 [repealed], 26-76-102 — 26-76-108, 26-76-201 [repealed], and 26-76-202.

CASE NOTES

ANALYSIS

Person.
Real Property.
Town or City.

Person.

A domestic insurance company is a "person" required to assess its stock for taxation. *Dallas County v. Banks*, 87 Ark. 484, 113 S.W. 37 (1908); *Dallas County v. Home Fire Ins. Co.*, 97 Ark. 254, 133 S.W. 1113 (1911).

Real Property.

Buildings, machinery, and fixtures situated on leased lands and belonging to the lessee are taxable as real property. *Union Compress Co. v. State*, 64 Ark. 136, 41 S.W. 52 (1897).

Interest in oil and gas leases in another state must be deemed an interest in real property, and not taxable in this state.

Greene County v. Smith, 148 Ark. 33, 228 S.W. 738 (1921).

Arkansas courts have adopted a three-part test to determine whether an item is a fixture: (1) whether the item is annexed to the realty; (2) whether the item is appropriate and adapted to the use or purpose of that part of the realty to which the item is connected; and (3) whether the party making annexation intended to make it permanent. *Rice v. Fas Fax Corp.* (In re Hot Shots Burgers & Fries, Inc.), 169 B.R. 920 (Bankr. E.D. Ark. 1994).

Town or City.

Whether a community is incorporated or not is not the test as to whether it is town or city under this section. *Southeast Ark. Levee Dist. v. Turner*, 184 Ark. 1147, 45 S.W.2d 512 (1932).

Cited: *Ritchie Grocer Co. v. Texarkana*, 182 Ark. 137, 30 S.W.2d 213 (1930); *Baldwin v. Rushing*, 254 Ark. 1042, 497 S.W.2d 668 (1973).

CHAPTER 2

PENALTIES AND OFFENSES GENERALLY

SECTION.

- 26-2-101. Violations by officials generally.
- 26-2-102. Violation of law or order of Arkansas Public Service Commission.
- 26-2-103. Loaning or using public money by officials.
- 26-2-104. Violations in assessment or equalization generally.
- 26-2-105. County assessor failing or neglecting to make appraisals.
- 26-2-106. Failure to list and value property.
- 26-2-107. Disposition of property to avoid assessment.

SECTION.

- 26-2-108. Nonperformance of duty by county clerk, county assessor, or county collector.
- 26-2-109. County collector purchasing tax land.
- 26-2-110. Improper tax collecting.
- 26-2-111. Fraudulent statement of accounts by collecting officer.
- 26-2-112. Removal of county judge.
- 26-2-113. Prosecution by state.
- 26-2-114. Taxpayer suit to recover taxes lost by corruption in office.

Cross References. Illegal exactions, Ark. Const., Art. 16, § 13.

Effective Dates. Acts 1869 (Adj. Sess.), No. 47, § 4: effective on passage.

Acts 1873, No. 124, § 200: effective on passage.

Acts 1879, No. 76, § 5: effective on passage.

Acts 1883, No. 114, § 226: effective on passage.

Acts 1917, No. 263, § 4: approved Mar. 17, 1917. Emergency declared.

Acts 1927, No. 129, § 38: approved Mar. 9, 1927. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health

and safety, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage."

Acts 1975, No. 928, § 1: effective simultaneously with the Arkansas Criminal Code on Jan. 1, 1976.

26-2-101. Violations by officials generally.

(a) A violation of any provision or failure to comply with any requirement of this act by any officer enumerated in this chapter shall be a violation and malfeasance in office.

(b) Upon conviction, the officer shall pay a fine of not more than five hundred dollars (\$500) and shall be removed from office.

History. Acts 1883, No. 114, § 224, p. 199; C. & M. Dig., § 10195; Pope's Dig., § 13978; A.S.A. 1947, § 84-1601; Acts 2005, No. 1994, § 160.

Meaning of "this act". Acts 1883, No. 114, codified as §§ 14-15-201, 14-15-505, 16-20-106, 16-92-113 [repealed], 16-92-114, 16-92-115 [repealed], 16-96-401, 21-6-305, 25-16-517, 26-1-101, 26-2-101, 26-2-103, 26-2-108, 26-3-201, 26-3-204, 26-3-301, 26-25-101 — 26-25-103, 26-25-105, 26-26-702 — 26-26-704, 26-26-714, 26-26-716, 26-26-717, 26-26-903 — 26-26-909, 26-26-914, 26-26-1001, 26-26-1102, 26-26-1107, 26-26-1202 — 26-26-1205, 26-26-1505, 26-28-101, 26-28-103 — 26-28-108,

26-28-110, 26-28-111, 26-34-101 — 26-34-103, 26-34-108, 26-35-201, 26-35-301 — 26-35-303, 26-35-401, 26-35-402, 26-35-503, 26-35-504, 26-35-603, 26-35-604, 26-35-901, 26-35-1001 — 26-35-1003 [repealed], 26-35-1004, 26-36-202, 26-36-204, 26-36-206 — 26-36-209, 26-36-211, 26-37-106, 26-37-206, 26-37-208, 26-37-209, 26-37-305, 26-37-307, 26-38-106, 26-38-107, 26-39-204, 26-39-205 [repealed], 26-39-206 — 26-39-221, 26-39-302 — 26-39-305 [repealed], 26-39-403, 26-39-406, 26-39-501 — 26-39-502, 26-39-503 — 26-39-509 [repealed], 26-76-102 — 26-76-108, 26-76-201 [repealed], and 26-76-202.

26-2-102. Violation of law or order of Arkansas Public Service Commission.

(a) Whoever shall violate any provisions of a law which the Arkansas Public Service Commission is required to administer, neglects or refuses to perform any duty therein required for which a penalty has not otherwise been provided, or neglects or refuses to obey any lawful requirement or order made by the commission shall forfeit to the state as a penalty for each offense not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100). The penalty shall be recovered by proper action in the name of the state, and on collection, it shall be paid into the State Treasury to the credit of the General Revenue Fund Account.

(b) In construing and enforcing the provisions of this section, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person, firm, company, copartnership, association, or corporation acting within the scope of his or her employment shall, in every case, be the act, omission, or failure of the person, firm, company, copartnership, association, or corporation.

History. Acts 1927, No. 129, § 34; Pope's Dig., § 2060; A.S.A. 1947, § 84-1602.

A.C.R.C. Notes. The authority of the Arkansas Public Service Commission with respect to the equalization and assessment of property and the administration

of tax laws, except with respect to public utilities and carriers, was transferred to the Assessment Coordination Department by Acts 1997, No. 436. See §§ 25-28-102 and 25-28-103.

Cross References. Authority of Public Service Commission, § 26-24-102.

26-2-103. Loaning or using public money by officials.

If any county treasurer, county collector, or county sheriff loans any money belonging to the state or county, with or without interest, or uses it for his or her own purposes, he or she shall forfeit and pay for every such offense a sum not to exceed one thousand dollars (\$1,000) nor less than five hundred dollars (\$500), to be recovered in a civil action at the suit of the state, for the use of the state, county, city, town, or body politic.

History. Acts 1883, No. 114, § 205, p. 199; C. & M. Dig., § 10167; Pope's Dig., § 13949; A.S.A. 1947, § 84-1615.

26-2-104. Violations in assessment or equalization generally.

Whoever shall violate any provision of law intended to secure the assessment or equalization of property for which a penalty has not otherwise been provided or neglects or refuses to obey any lawful requirement or order made by the county equalization board shall be guilty of a violation and upon conviction shall be fined not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100).

History. Acts 1929, No. 172, § 34; Pope's Dig., § 13675; A.S.A. 1947, § 84-1603; Acts 2005, No. 1994, § 161.

26-2-105. County assessor failing or neglecting to make appraisals.

(a) Any county assessor who shall knowingly or willfully fail or neglect to appraise all moneys, credits, investments in bonds or stocks, and all personal property of whatever description or kind and to appraise all the real estate and improvements thereon in the county for which he or she is assessor, according to the provisions of the revenue law for this state, shall be deemed guilty of a misdemeanor. Upon conviction, he or she shall:

- (1) Forfeit all his or her pay as county assessor;
 - (2) Be forever disqualified from holding any office of profit or trust in this state;
 - (3) Be fined not exceeding one thousand dollars (\$1,000); and
 - (4) Be imprisoned in the penitentiary not to exceed one (1) year.
- (b) A conviction for a failure or neglect to do his or her duty as county assessor shall in no way relieve him or her from the pains and penalties

of perjury if he or she makes oath that he or she has made the assessment according to law.

History. Acts 1869 (Adj. Sess.), No. 47, §§ 1, 2, p. 101; C. & M. Dig., §§ 2817, 2818; Pope's Dig., §§ 3535, 3536; A.S.A. 1947, §§ 84-1604, 84-1605.

A.C.R.C. Notes. Pursuant to Arkansas Constitution, Amendments 57 and 71, and § 26-3-302, intangible personal property and "items of household furniture and furnishings, clothing, appliances, and other personal property used within the

home, if not held for sale, rental, or other commercial or professional use", are exempt from ad valorem taxes. Additional ad valorem tax exemptions for public property, churches, cemeteries, schools, libraries, charities, and textile mills are found in Arkansas Constitution, Article 16, § 5(b), and Arkansas Constitution, Amendment 12. See also § 26-3-301 et seq.

26-2-106. Failure to list and value property.

(a)(1) Any county assessor or any member of a county equalization board who shall knowingly and willfully fail or refuse to list and value any item of property subject to taxation, knowing that the item of property is subject to taxation and is not listed and valued for that year, or who shall fail or refuse to value any property at the percent of its market value as certified by the Arkansas Public Service Commission shall be subject to a penalty of five hundred dollars (\$500) for each offense, to be recovered by a civil action in the name of the state.

(2) Not exceeding twenty percent (20%) of these recoveries may be retained by the commission to pay the fee of the attorney for them and the other expenses of the litigation, with the remainder of the recovery to be deposited in the State Treasury to the credit of the General Revenue Fund Account.

(b)(1) Any suits under subsection (a) of this section shall be brought within one (1) year after the cause of action shall accrue and not thereafter.

(2) All actions may be brought in the county where the defendant resides, or in any adjoining county, and service of summons had on the defendant in the county of his or her residence.

(c) The powers granted in this section to the commission shall be cumulative to the powers heretofore granted to the commission.

History. Acts 1917, No. 263, §§ 2, 3, 4, p. 1359; C. & M. Dig., §§ 9922, 9923; Pope's Dig., §§ 13690, 13691; A.S.A. 1947, §§ 84-1606, 84-1607, 84-1607n.

A.C.R.C. Notes. The authority of the Arkansas Public Service Commission with respect to the equalization and assessment of property and the administration

of tax laws, except with respect to public utilities and carriers, was transferred to the Assessment Coordination Department by Acts 1997, No. 436. See §§ 25-28-102 and 25-28-103.

Cross References. Determination of ratio of valuation, § 26-26-304.

26-2-107. Disposition of property to avoid assessment.

If any person, for the purpose of avoiding listing for the payment of taxes on any property subject to taxation, shall sell, give away, or otherwise dispose of the property, under or subject to any agreement

expressed or implied or any understanding with the purchaser, donee, or recipient of the property that the property is to be reconveyed, restored, or redelivered to the person so disposing of the property, he or she shall be guilty of a violation and upon conviction be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000).

History. Acts 1873, No. 124, § 137, p. § 13954; A.S.A. 1947, § 84-1617; Acts 294; C. & M. Dig., § 10172; Pope's Dig., 2005, No. 1994, § 162.

26-2-108. Nonperformance of duty by county clerk, county assessor, or county collector.

Every county clerk, county assessor, or county collector who in any case refuses or knowingly neglects to perform any duty enjoined on him or her by this title or who consents to or connives at any evasion of its provisions whereby any proceedings required in this act shall be prevented or hindered or where any property required to be listed for taxation or for the collection of taxes thereon or the valuation thereof is entered on the tax books or lists at less than the true value shall forfeit and pay to the state, for every neglect, refusal, connivance, or consent, not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000), at the discretion of the circuit court, to be recovered by an action in the name of the state before the circuit court of the proper county.

History. Acts 1883, No. 114, § 206, p. **Meaning of "this act".** See note to 199; C. & M. Dig., § 10168; Pope's Dig., § 26-2-101.
§ 13950; A.S.A. 1947, § 84-1608.

26-2-109. County collector purchasing tax land.

(a) No county collector or his or her deputy, either directly or indirectly, shall be concerned in the purchase of any tract of land or town lot sold for the payment of taxes.

(b) A person violating this section shall be guilty of a violation and subject to a fine of five hundred dollars (\$500).

History. Rev. Stat., ch. 128, § 94; C. & A.S.A. 1947, § 84-1609; Acts 2005, No. M. Dig., § 10170; Pope's Dig., § 13952; 1994, § 163.

26-2-110. Improper tax collecting.

If any county collector shall collect taxes not stated on the tax book or shall collect a greater amount than is therein stated, except as authorized by this act, he or she shall be guilty of a Class C felony.

History. Acts 1873, No. 124, § 83, p. § 2, provided that, notwithstanding that 294; C. & M. Dig., § 10171; Pope's Dig., § 13953; Acts 1975, No. 928, § 26; A.S.A. 1947, § 84-1610. all or part of a statute defining a criminal offense is amended or repealed by the act, the provisions so amended or repealed shall remain in force for the purpose of

Publisher's Notes. Acts 1975, No. 928,

authorizing the prosecution, conviction, and punishment of a person committing an offense under the provisions prior to the effective date of the act.

Meaning of "this act". Acts 1873, No. 124, codified as §§ 14-15-808 [repealed], 26-2-110, and 26-2-107.

CASE NOTES

Cited: Tucker v. Holt, 343 Ark. 216, 33 S.W.3d 110 (2000).

26-2-111. Fraudulent statement of accounts by collecting officer.

Any county sheriff, collector of revenues, constable, or other officer collecting moneys belonging to the State of Arkansas, or to any county therein, who fraudulently states his or her account for settlement and thereby deprives the State of Arkansas, or any county therein, of its just revenues; or any county clerk who keeps fraudulent accounts against the county collector or against the county treasurer or makes fraudulent and false additions of the tax books thereby concealing the true value of the same; or any county treasurer who keeps fraudulent accounts of the county revenues coming to his hands and, by any of these fraudulent acts, the State of Arkansas or any county therein is deprived of its just revenues, the officer so offending shall, upon conviction, be removed from office.

History. Acts 1879, No. 76, § 1, p. 107; C. & M. Dig., § 10197; Pope's Dig., § 13980; A.S.A. 1947, § 84-1611.

26-2-112. Removal of county judge.

Any county judge who willfully approves any false and fraudulent account made by the county sheriff, county collector, county clerk, county treasurer, or other officer collecting or holding revenues belonging to the State of Arkansas, or to any county therein, or receives a bribe for doing an unlawful act shall, upon conviction, be removed from office.

History. Acts 1879, No. 76, § 2, p. 107; C. & M. Dig., § 10198; Pope's Dig., § 13981; A.S.A. 1947, § 84-1612.

26-2-113. Prosecution by state.

Nothing contained in this section and §§ 26-2-111, 26-2-112, and 26-2-114 shall preclude the State of Arkansas from prosecuting county officers or others for the acts complained of under any of the criminal laws of this state.

History. Acts 1879, No. 76, § 4, p. 107; C. & M. Dig., § 10203; Pope's Dig., § 13986; A.S.A. 1947, § 84-1614.

26-2-114. Taxpayer suit to recover taxes lost by corruption in office.

(a) If any taxpayer in any county in this state has knowledge of corruption in office whereby the State of Arkansas, or any county therein, has been deprived of its just revenues, he or she shall have the right, in his or her own name as a taxpayer, to institute legal proceedings against the officer, by a petition to the circuit judge sitting in equity, setting forth the facts and nature of the corrupt acts, together with exhibits and proofs, and the petition shall be verified by affidavit of the petitioner.

(b) Upon ten (10) days' notice to the defendant, the cause shall proceed as other causes. It shall be heard, tried, and determined at the first court after the petition has been filed if the required notice has been given.

(c)(1) The proceedings authorized by this section shall be summary. However, if it shall appear to the circuit court that the ends of justice require it, a continuance may be granted to either party to the next term of the circuit court, but not thereafter.

(2) The party to whom the continuance is granted shall be required to enter into additional bond, the amount to be fixed and the security to be approved by the circuit court.

(d)(1) Upon the trial, if it shall appear that the official acts of the officer are corrupt and fraudulent and by those acts and doings he or she shall have defrauded the State of Arkansas, or any county therein, of its just revenues, then a decree shall be entered against him or her ousting him or her from his or her office and declaring it to be vacant, and for all moneys which he or she may have unlawfully detained.

(2) If, upon the hearing of the cause, it shall appear that the defendant is not guilty and has not committed the fraudulent acts complained of, and that the state and the county have not been deprived of their revenues as complained of by the petitioner, then a decree shall be entered according to the facts and, also, a decree shall be entered against the petitioner and his or her securities for any sums of money which the defendant may have actually lost by reason of the proceeding.

(e) Before any such cause shall be heard, the petitioner shall enter into bond to the defendant with security, to be approved by the circuit judge, in a sufficient sum to pay any damage that the defendant might sustain by the proceedings.

History. Acts 1879, No. 76, § 3, p. 107; Dig., §§ 13982-13985; A.S.A. 1947, § 84-C. & M. Dig., §§ 10199-10202; Pope's 1613.

CASE NOTES**ANALYSIS**

Constitutionality.
Bond.
Equity Jurisdiction.

Constitutionality.

This section is unconstitutional as applied to chancery courts. *Gladish v. Lovewell*, 95 Ark. 618, 130 S.W. 579 (1910).

Bond.

Action of taxpayer to recover fees wrongfully paid to officer was brought under the provisions of Ark. Const., Art. 16, § 13, and not under this section, and therefore no bond was required. *Baker v. Allen*, 204 Ark. 818, 164 S.W.2d 1004 (1942).

Equity Jurisdiction.

Primary object of suit under this section being to oust collector from office, equity could not be given jurisdiction of such an action. *Gladish v. Lovewell*, 95 Ark. 618, 130 S.W. 579 (1910).

Suit against tax collector to account for taxes would not lie in equity in absence of allegation of proper officers to sue. *Gladish v. Lovewell*, 95 Ark. 618, 130 S.W. 579 (1910).

Although equity does not have jurisdiction of cases under this section, action of taxpayer to recover funds improperly withdrawn from county treasury was within the jurisdiction of a court of equity and should have been brought in the chancery court. *Grooms v. Bartlett*, 123 Ark. 255, 185 S.W. 282 (1916).

CHAPTER 3
PROPERTY SUBJECT TO TAXATION AND EXEMPTIONS

SUBCHAPTER.

- 1. GENERAL PROVISIONS. [RESERVED.]
- 2. TAXABLE PROPERTY.
- 3. EXEMPTIONS FROM TAXATION.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — TAXABLE PROPERTY

SECTION.

- 26-3-201. Property subject to taxes generally.
- 26-3-202. Money.
- 26-3-203. Mobile homes and manufactured homes.

SECTION.

- 26-3-204. Federal lands sold by state.
- 26-3-205. Timber rights.
- 26-3-206. Property used for other than church purposes — Exemption.

Preambles. Acts 1895, No. 10 contained a preamble which read: "Whereas, By an act of Congress, approved August 13, 1894, all circulating notes of national banking associations and United States legal tender notes, and all other notes and certificates of the United States payable on demand and circulating, or intended to circulate, as currency, and gold and silver or other coin, shall be subject to taxation as money on hand or on deposit under the laws of any State or Territory; therefore..."

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

Acts 1895, No. 10, § 2: effective on passage.

Acts 1905, No. 146, § 2: effective on passage.

Acts 1981 (1st Ex. Sess.), No. 29, § 3: Dec. 1, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that some confusion has arisen regarding the present law relating to the assessment and taxation of mobile homes; that such law should be clarified as soon as possible to assure the efficient administration of the law and that this Act is designed to accomplish this purpose and should be given effect

immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1987, No. 1040, § 7: Apr. 14, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that many churches have engaged in the practice of investing in real and personal property, or have received donations of commercial or rental property which is not now assessed for ad valorem tax purposes and are not paying tax thereon as required by law, thereby depriving the local taxing units of thousand of dollars of much needed revenues; that under the Arkansas Constitution of 1874, Article 16, Sections 5 and 6, such property is not exempt from the provisions of the ad valorem property tax; that in many instances such churches do not report for Arkansas Income Tax purposes income derived from investments or profits derived from rental income or other commercial or business activities and do not pay taxes thereon; that this reduces the amount of revenues available for funding of State services; and that only by the immediate passage of this Act can this situation be remedied. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1989, No. 869, § 5: Mar. 22, 1989. Emergency clause provided: “It is hereby found and determined that the present procedures pertaining to delinquent property taxes on mobile homes and manufactured homes are inadequate; that this act provides procedures to attach delinquent real property tax to the personal property tax of the owner of the mobile home or

manufactured home; and that this act is immediately necessary to implement appropriate procedures applicable to delinquent property taxes on mobile homes and manufactured homes. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 2001, No. 410, § 2: Feb. 23, 2001. Emergency clause provided: “It is found and determined by the General Assembly that Amendment 79 to the Arkansas Constitution was adopted by the voters of this state at the November General Election, 2000; that the amendment requires the General Assembly to provide a tax credit against the property taxes levied against homesteads in this state; that under present law, some mobile homes and manufactured homes are taxed as real property and some are not; that all mobile homes and manufactured homes should be taxed as real property and thereby allow the owners to receive the tax credit required by Amendment 79; that this act so provides; and that this act must go into effect immediately in order to coincide with Amendment 79. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

U.S. Code. The Securities Exchange Act of 1934, referred to in this section, is codified as 15 U.S.C. § 78a et seq.

RESEARCH REFERENCES

ALR. Sales, use, or privilege tax on sales of, or revenues from sales of advertising. 40 A.L.R.4th 1114.

Am. Jur. 71 Am. Jur. 2d, State Tax., § 191 et seq.

C.J.S. 84 C.J.S., Tax., § 57 et seq.

26-3-201. Property subject to taxes generally.

All property, whether real or personal, in this state; all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, of persons residing therein; the property of corporations; and the property of all banks or banking companies and of all bankers and brokers shall be subject to taxation. Such property, moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, or the value thereof, shall be entered on the list of taxable property for that purpose.

History. Acts 1883, No. 114, § 2, p. 199; C. & M. Dig., § 9853; Pope's Dig., § 13597; A.S.A. 1947, § 84-201.

A.C.R.C. Notes. Pursuant to Arkansas Constitution, Amendments 57 and 71, and § 26-3-302, intangible personal property and "items of household furniture and furnishings, clothing, appliances, and other personal property used within the home, if not held for sale, rental, or other commercial or professional use", are exempt from ad valorem taxes. Additional

ad valorem tax exemptions for public property, churches, cemeteries, schools, libraries, charities, and textile mills are found in Arkansas Constitution, Article 16, § 5(b), and Arkansas Constitution, Amendment 12. See also § 26-3-301 et seq.

Cross References. Tax on timber and rangelands, § 26-61-101 et seq.

Taxation of corporate property, Ark. Const., Art. 16, § 7.

CASE NOTES

ANALYSIS

In General.
Insolvent Banks.
Intangibles.
Personal Property.
Real Property.
Trust Arrangements.

In General.

It is the rule and not the exception that property shall be taxed. *Vandergrift v. Lowery*, 195 Ark. 257, 111 S.W.2d 510 (1937).

The right to impose taxes upon citizens and property for the support of the state government may be restricted by the Arkansas Constitution, but needs no clause to confer it. *Ouachita County v. Rumph*, 43 Ark. 525 (1884).

Insolvent Banks.

Property of insolvent bank continues subject to taxation notwithstanding bank's insolvency. *Brooks v. Randolph State Bank*, 188 Ark. 571, 66 S.W.2d 1071 (1934).

Intangibles.

Notes, bills of exchange, stocks, and securities of all kinds are property and

subject to taxation. *Ouachita County v. Rumph*, 43 Ark. 525 (1884).

Corporate stock is subject to tax. *Dallas County v. Banks*, 87 Ark. 484, 113 S.W. 37 (1908).

Personal Property.

Personal property being used in this state, though owned by a foreign company, is subject to taxation. *Eoff v. Kennefick-Hammond Co.*, 80 Ark. 138, 96 S.W. 986 (1906).

Real Property.

A note given for land and the land itself are both subject to taxation, the note as property of the holder and the land as property of the purchaser. *Ouachita County v. Rumph*, 43 Ark. 525 (1884).

Land held as private property is subject to taxation, though it does not appear upon the public surveys. *Buckner v. Sugg*, 79 Ark. 442, 96 S.W. 184 (1906).

Where owner of 60 feet of a certain lot sold part of it to a city, retaining ownership of only 51 feet thereof, subsequent assessment on the entire 60 feet and sale for nonpayment of taxes were void. *Kaplan v. Scherer*, 205 Ark. 554, 169 S.W.2d 660 (1943).

Trust Arrangements.

Where, under an instrument designated as a "declaration of trust," a trust estate was created for the purpose of acquiring oil and gas leases in a foreign state, the interest of the beneficiaries in

leases so acquired was not subject to taxation in this state. *Greene County v. Smith*, 148 Ark. 33, 228 S.W. 738 (1921).

Cited: *Omega Tube & Conduit Corp. v. Maples*, 312 Ark. 489, 850 S.W.2d 317 (1993).

26-3-202. Money.

(a) All circulation notes of national banking associations, United States legal tender notes, all other notes and certificates of the United States payable on demand and circulating or intended to circulate, as currency, and gold, silver, or other coin held or owned by any citizen or resident of the State of Arkansas are made taxable for all state, county, school, and municipal purposes.

(b) Each person in the state required by law to list property shall make out and deliver to the county assessor, verified by the property owner's oath or affirmation, a list of all moneys, certificates, and circulating notes described in this section in his or her possession or under his or her control on January 1 of each year, which he or she is required to list for taxation, either as holder or owner thereof, or as guardian, parent, husband, executor, administrator, receiver, accounting officer, partner, agent, or factor.

History. Acts 1895, No. 10, § 1, p. 15; C. & M. Dig., § 9857; Pope's Dig., § 13602; A.S.A. 1947, § 84-205.

A.C.R.C. Notes. Pursuant to Arkansas Constitution, Amendments 57 and 71, and § 26-3-302, intangible personal property

and "items of household furniture and furnishings, clothing, appliances, and other personal property used within the home, if not held for sale, rental, or other commercial or professional use", are exempt from ad valorem taxes.

26-3-203. Mobile homes and manufactured homes.

(a) Mobile homes and manufactured homes shall be deemed real property for the purpose of ad valorem property taxation.

(b) Real property taxes and any interest, penalties, or other charges on a mobile home on a leased site in a mobile home park or any other leased site, and any assessment or user fee chargeable to the owner of the mobile home and constituting a lien, shall be assessed and levied against the owner of the mobile home whose name appears on the certificate or other acceptable evidence of ownership, and shall be a lien on the mobile home or manufactured home only.

(c) When the property tax on mobile homes and manufactured homes which are now assessed as real property become delinquent, the delinquent real property tax shall be attached to the personal property tax of the owner of the mobile home or manufactured home and the county collector shall not accept payment of the personal property taxes without collecting payment of the delinquent real property taxes at that time.

History. Acts 1981, No. 113, § 1; 1981 §§ 84-215, 84-215.1; Acts 1989, No. 869, (Ex. Sess.), No. 29, § 1; A.S.A. 1947, § 1; 2001, No. 410, § 1.

RESEARCH REFERENCES

ALR. Classification, as real estate or personal property, of mobile homes or trailers for purposes of state or local taxation. 7 A.L.R.4th 1016.

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

26-3-204. Federal lands sold by state.

(a) All tracts of land set apart for school or other purposes and donated to the state by the Congress of the United States for a specific purpose and sold under the authority of the laws of this state to any person shall be subject to taxation as other land in this state immediately after sale. These lands shall not be sold for taxes until the purchase money shall be fully paid, but shall be returned delinquent as other lands, and the personal property of the purchaser shall be subject to sale to pay the taxes thereon.

(b) Until the payment of taxes or the collection thereof from the personal property, these lands shall be continued on the tax books and the taxes of each year charged thereon and added to the tax and penalty due when they became delinquent until payment is made or the lands are resold by the proper officer or authority pursuant to the laws in force for the sale of these lands.

History. Acts 1883, No. 114, § 3, p. 199; C. & M. Dig., § 9854; Pope's Dig., § 13598; A.S.A. 1947, § 84-202.

CASE NOTES

Lands Purchased from United States.

Land purchased from the federal government is subject to taxes as soon as entry is made and the purchase price paid,

although no patent is issued. *Diver v. Friedheim*, 43 Ark. 203 (1884); *Smith v. Hollis*, 46 Ark. 17 (1885); *Burcham v. Terry*, 55 Ark. 398, 18 S.W. 458 (1892).

26-3-205. Timber rights.

(a) All timber in this state which has been sold separately and apart from the land on which it stands shall be classed as personal property and shall be subject to taxation as such.

(b) Timber interests shall be assessed and the taxes collected thereon in the county where the timber is located.

History. Acts 1905, No. 146, § 1, p. 361; C. & M. Dig., § 9855; Pope's Dig., § 13599; A.S.A. 1947, § 84-204.

Cross References. Assessment of timber rights, § 26-26-1109.

CASE NOTES

ANALYSIS

Assessment.
Conveyance.

Assessment.

Standing timber, although the ownership thereof is severed from the ownership of the soil, is part of the land and, as such, subject to assessment. *Lewis v. Delinquent Lands*, 182 Ark. 838, 33 S.W.2d 379 (1930).

Conveyance.

A contract to convey standing timber is a contract to convey "an interest in land"

notwithstanding this section. *Anderson-Tully Co. v. Gillett Lumber Co.*, 143 Ark. 97, 222 S.W. 362 (1920).

Where growing trees are conveyed, separating timber from the land so that the landowner and timber owner have separate estates, the growing trees become property subject to taxation apart from the land. *Southern Lumber Co. v. Arkansas Lumber Co.*, 176 Ark. 906, 4 S.W.2d 928 (1928).

Purchaser of timber from improvement districts must pay taxes when timber is assessed. *Little Red River Levee Dist. v. Moore*, 197 Ark. 945, 126 S.W.2d 605 (1939).

26-3-206. Property used for other than church purposes — Exemption.

(a) All real or personal property owned by any church and held for, or used for, commercial, business, rental, or investment purposes, or purposes other than church purposes, shall be listed for assessment. The ad valorem tax shall be paid thereon at the same rate and at the time and in the same manner provided by law for any other property owner.

(b) However, in the event any property is used partially for church purposes and partially for investments or other commercial or business purposes, the property shall be exempt from the ad valorem tax.

History. Acts 1987, No. 1040, § 1.

SUBCHAPTER 3 — EXEMPTIONS FROM TAXATION

SECTION.

- 26-3-301. Property exempt from taxes generally.
- 26-3-302. Intangible personalty.
- 26-3-303. Parsonages.
- 26-3-304. Textile mills.
- 26-3-305. Nonprofit waterworks.
- 26-3-306. Disabled veterans, surviving spouses, and minor dependent children.

SECTION.

- 26-3-307. [Transferred.]
- 26-3-308. Property owned by the State Highway Commission or the State Highway and Transportation Department.
- 26-3-309. [Transferred.]
- 26-3-310. [Transferred.]

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

Acts 1929, No. 74, § 4: approved Mar. 2, 1929. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health

and safety, an emergency is declared to exist, and this act shall take effect and be in force from and after its passage."

Acts 1953, No. 363, § 5: approved Mar. 28, 1953. Emergency clause provided: "This Act, being necessary for the preser-

vation of the public peace, health, and safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect, from and after its passage.”

Acts 1975, No. 319, § 4: Mar. 5, 1975. Emergency clause provided: “It is hereby found and determined by the General Assembly that the present law exempts certain disabled veterans from the payment of all State taxes on the homestead and personal property owned by such disabled veteran but fails to provide a like exemption for the surviving spouse and surviving minor dependent children of such disabled veteran; that in many cases the surviving spouse and minor dependent children of a deceased disabled veteran are in even greater need of tax exemption for the homestead and personal property owned by the disabled veteran and left to such dependents than was the disabled veteran during his lifetime; that this Act is designed to extend the exemption to the surviving spouse and surviving minor dependent children of disabled veterans and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1975 (Extended Sess., 1976), No. 1220, § 4: Feb. 12, 1976. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 196 and Act 319 of 1975 amend the same section of law and relate to the exemption of certain disabled veterans and their surviving spouses and minor dependent children from the payment of all State taxes on the homestead and personal property owned by such disabled veteran and by the surviving spouse and surviving minor dependent children of such disabled veteran; that since the two acts amended the same existing section of law and purported to restate the section in its entirety there has been considerable confusion regarding the effectiveness of the exemptions provided in said acts; and that this Act is immediately necessary to clarify the laws regarding such disabled veterans tax exemptions to avoid misunderstanding and hardship on such veterans and their surviving spouses and minor dependent children. Therefore, an emergency is hereby declared to exist and

this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1977, No. 106, § 5: Feb. 8, 1977. Emergency clause provided: “It is hereby found and determined by the General Assembly that Amendment No. 57 to the Arkansas Constitution, adopted by the people at the 1976 General Election authorizes the General Assembly to classify intangible personal property, to provide for the taxation of intangibles at a different level than tangible personal property, to provide for the taxation of intangibles on a basis other than ad valorem, or to exempt intangibles from ad valorem taxes; that it is in the best interests of the citizens and the political subdivisions of the State that intangibles be exempted from ad valorem taxes at least until a study can be made of the extent to which, if any, such intangibles should be taxed and the most appropriate manner for levying any such taxes; and that the assessment of real and personal property for ad valorem tax purposes commences very early in the calendar year and it is necessary that this Act be given effect immediately in order to avoid confusion in the assessment of personal property for ad valorem taxes during the calendar year 1977. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1983, No. 332, § 3: Mar. 3, 1983. Emergency clause provided: “It is hereby found and determined by the General Assembly that in some instances waterworks systems owned by nonprofit property owners associations are being subjected to ad valorem taxation in contravention of Article 16, Section 5 of the Arkansas Constitution of 1874, and that this legislation is necessary in order to clarify the exemption granted thereby. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1987, No. 627, § 5: Apr. 4, 1987. Emergency clause provided: “It is hereby found and determined by the General As-

sembly that County Assessors in various counties in Arkansas have assessed property belonging to public institutions of higher learning, state agencies, institutions, boards and commissions, and that county assessors are required by law to assess all real and personal property of their counties annually between the first Monday in January and the first day in August, and that an immediate need exists to clarify the status of property owned by public institutions of higher learning, State agencies, institutions, boards and commissions in order to prevent such property from being placed on the tax rolls by county assessors. Therefore, an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 1010, § 5: Apr. 14, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1220 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 1040, § 7: Apr. 14, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that many churches have engaged in the practice of investing in real and personal property, or have received donations of commercial or rental property which is not now assessed for ad valorem tax purposes and are not paying tax thereon as required by law, thereby depriving the local taxing units of thousand of dollars of much needed revenues; that under the Arkansas Constitution of 1874, Article 16, Sections 5 and 6, such property is not exempt from the provisions of the ad valorem property tax; that in many instances such churches do not report for Arkansas Income Tax purposes income derived from investments or profits derived from rental income or other commercial or business activities and do not pay

taxes thereon; that this reduces the amount of revenues available for funding of State services; and that only by the immediate passage of this Act can this situation be remedied. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 414, § 2: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the Arkansas sales and use tax applies to the sale of adaptive medical equipment and disposable medical supplies; that this tax creates a financial hardship on those who must rely on these items to carry out the normal activities of their lives; and that this act is designed to remove this hardship. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and welfare, shall be in full force and effect from and after July 1, 1991."

Acts 1991, No. 961, § 6: Mar. 29, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that in certain instances real estate taxes and other assessments have either not been collected or have been difficult to collect; that the provisions of this act are designed to alleviate such problems and that only by the immediate effectiveness of this act may such problems be solved and certain tax revenues and assessments be rightfully provided local taxing authorities. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 669, § 6: Mar. 17, 1995. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that county assessors in various counties in Arkansas have assessed public property which is available for use by persons or organizations for events which are not open to the general public; and that county assessors are required by law to assess all real and personal property in their counties annually between the first Monday in January and the first day in August, and that an immediate need exists to clarify the status

of public property used by persons or organizations for events which are not open to the general public in order to prevent such property from being placed on the tax rolls by county assessors. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 2001, No. 1375, § 2: July 1, 2003.

Acts 2001, No. 1544, § 6: Apr. 12, 2001. Emergency clause provided: "It is found and determined by the General Assembly that in order to efficiently reimburse the counties for the homestead property tax credit, county assessors are required to recertify to the Chief Fiscal Officer the amount of real property reduction on or before June 30 of the year 2001 and every year thereafter. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is

neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also [sic] effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

Acts 2007, No. 411, § 2: Jan. 1, 2007.

RESEARCH REFERENCES

ALR. Recovery of tax paid on exempt property. 25 A.L.R.4th 186.

Exemptions: religious societies or institutions. 28 A.L.R.4th 344.

Exemption of public golf courses from local property taxes. 41 A.L.R.4th 963.

Exemption of nonprofit theater or concert hall from local property taxation. 42 A.L.R.4th 614.

What are educational institutions or schools within state property tax exemp-

tion provisions. 34 A.L.R.4th 698.

Exemption from real property taxation of residential facilities maintained by hospital for patients, staff, or others. 61 A.L.R.4th 1105.

Am. Jur. 71 Am. Jur. 2d, State Tax., § 307 et seq.

Ark. L. Rev. Property Tax Exemptions in Arkansas, 4 Ark. L. Rev. 433.

C.J.S. 84 C.J.S., Tax., § 215 et seq.

26-3-301. Property exempt from taxes generally.

All property described in this section, to the extent limited, shall be exempt from taxation:

(1) Public school buildings and buildings used exclusively for public worship and the grounds attached to these buildings necessary for the proper occupancy, use, and enjoyment of the buildings, not leased or otherwise used with a view to profit;

(2) All public institutions of higher learning and all buildings and grounds belonging to those institutions;

(3) All lands used exclusively as graveyards or grounds for burying the dead, except those held by any person, company, or corporation with a view to profit or for the purpose of speculation in the sale of the lands;

(4) All property, whether real or personal, belonging exclusively to this state, including property of state agencies, institutions, boards, or commissions, or the United States;

(5) All property, whether real or personal, belonging exclusively to any county of this state;

(6) All lands, houses, and other buildings belonging to any county, city, or town used exclusively for the accommodation of the poor;

(7) All buildings belonging to institutions of purely public charity, together with the land actually occupied by these institutions, not leased or otherwise used with a view to profit, and all moneys and credits appropriated solely to sustaining, and belonging exclusively to, these institutions;

(8) All fire engines and other implements used for the extinguishment of fires, with the buildings used exclusively for the safekeeping of the fire engines and other implements used for the extinguishment of fires, and for the meeting of fire companies, whether belonging to any town or to any fire company organized in the town;

(9) All market houses, public squares, other public grounds, town and city houses or halls owned and used exclusively for public purposes, and all works, machinery, and fixtures belonging to any town and used exclusively for conveying water to the town;

(10) Public property which may be reserved for use by any person or organization, with or without a fee for such use, and is being used exclusively for public purposes, regardless of whether the event for which the property is reserved is open for attendance or participation by the general public;

(11) All property owned by the Girls' 4-H house, Boys' 4-H house, and the Future Farmers of America houses when the houses are used for the sole purpose of occupancy and use and enjoyment by students on the property and not leased or otherwise used with a view to profit; and

(12)(A) Under the provisions of this section, all dedicated church property, including the church building used as a place of worship, buildings used for administrative or missional purposes, the land upon which the church buildings are located, all church parsonages, any church educational building operated in connection with the church, including a family life or activity center, a recreation center, a youth center, a church association building, a day care center, a kindergarten, or a private church school shall be exempt.

(B) However, in the event any property is used partially for church purposes and partially for investments or other commercial or business purposes, the property shall be exempt from the ad valorem tax.

2; 1987, No. 1040, § 1; 1995, No. 669, § 1; 2005, No. 1281, § 1; 2007, No. 827, § 195.

Cross References. Exempting new manufacturing establishment from taxation, Ark. Const. Amend. 27.

Intangible personal property, Ark. Const. Amend. 57.

Other tax exemptions forbidden, Ark. Const., Art. 16, § 6.

Personal property taxes, Ark. Const. Amend. 71.

Property, tax exemptions, Ark. Const., Art. 16, §§ 5, 16.

State ad valorem tax prohibited, Ark. Const. Amend. 47.

Textile mills, tax exemptions, Ark. Const. Amend. 12.

CASE NOTES

ANALYSIS

In General.

Adjacent Property.

Cemeteries.

Charities.

Churches.

Improvement Districts.

Municipalities.

Schools.

In General.

All property is subject to taxation except such as is specially exempted by the Arkansas Constitution, and nothing else is or can be made exempt. *Garland County v. Gaines*, 56 Ark. 227, 19 S.W. 602 (1892).

Adjacent Property.

The parking lot, connecting driveways, and landscaped areas surrounding a tax exempt church building, were also held to be exempt. *Phillips v. Mission Fellowship Baptist Church*, 59 Ark. App. 242, 955 S.W.2d 917 (1997).

Cemeteries.

When church building burned and members disbanded, only the portion used as a cemetery was exempt from taxation. *Burbridge v. Smyrna Baptist Church*, 212 Ark. 924, 209 S.W.2d 685 (1948).

A cemetery is exempt from taxation unless held for profit. *Ponder v. Richardson*, 213 Ark. 238, 210 S.W.2d 316 (1948).

Charities.

The fact that rents and revenues of certain real estate are devoted to purposes of public charity will not exempt such property from taxation, since it is only when the property itself is actually and directly used for charitable purposes that the law exempts it from taxation. *Brodie v. Fitzgerald*, 57 Ark. 445, 22 S.W. 29 (1893).

A hospital supported by contributions out of employees' wages and operated for

the benefit of employees and persons injured on company property is not entitled to exemption as being an institution of public charity. *Missouri Pac. Hosp. Ass'n v. Pulaski County*, 211 Ark. 9, 199 S.W.2d 329 (1947).

Part of property for which rents were collected and which was not being directly and exclusively used for public charity was subjected to taxation, as the exemption is based upon the actual use of property rather than the use of its revenues. *Burgess v. Four States Mem. Hosp.*, 250 Ark. 485, 465 S.W.2d 693 (1971).

Churches.

A vacant lot belonging to a church adjoining the lot on which the church stands is subject to taxation. *Pulaski County v. First Baptist Church*, 86 Ark. 205, 110 S.W. 1034 (1908).

Lands conveyed to a religious society are exempt from taxes in part only as to portion used for religious purposes. *Burbridge v. Smyrna Baptist Church*, 212 Ark. 924, 209 S.W.2d 685 (1948).

Subdivision (11)(A) does not clearly embrace television towers or like structures with the degree of exactness and certainty required. *Agape Church, Inc. v. Pulaski County*, 307 Ark. 420, 821 S.W.2d 21 (1991).

A television tower is not a building, and the fact that a small incidental tower house was located on the property did not convert the land into a "building." *Agape Church, Inc. v. Pulaski County*, 307 Ark. 420, 821 S.W.2d 21 (1991).

Ownership is not a condition for tax-exempt status for churches; use is determinative of entitlement to a tax exemption. *Phillips v. Mission Fellowship Baptist Church*, 59 Ark. App. 242, 955 S.W.2d 917 (1997).

Improvement Districts.

Exempt property is considered in the organization of improvement district according to its value fixed by the assessment roll, since it is not exempt from such assessments. *Fry v. Poe*, 175 Ark. 375, 1 S.W.2d 29 (1927).

Municipalities.

Land purchased by a city for present use as a dumping ground and used as such for several months, though such use had been discontinued because the road to it had become impassable, was exempt from taxation. *Hudgins v. City of Hot Springs*, 168 Ark. 467, 270 S.W. 594 (1925).

Before a city can successfully claim exemption from taxation, the property must

have been used for a public purpose; contemplated future use is not sufficient. *City of Springdale v. Duncan*, 240 Ark. 716, 401 S.W.2d 747 (1966).

Schools.

The exemption as to school buildings applies to private schools as well as public schools. *Phillips County v. Sister Estelle*, 42 Ark. 536 (1884).

Lands of school district held for profit are taxable. *Board of Improv. v. School Dist.*, 56 Ark. 354, 19 S.W. 969, 35 Am. St. Rep. 108 (Ark. 1892); *School Dist. v. Howe*, 62 Ark. 481, 37 S.W. 717 (1896).

Cited: *Fordyce & McKee v. Woman's Christian Nat'l Library Ass'n*, 79 Ark. 550, 96 S.W. 155 (1906).

26-3-302. Intangible personalty.

(a) All intangible personal property in this state shall be exempt from all ad valorem tax levies of counties, cities, and school districts in the state.

(b) The exemption provided in this section shall be applicable with respect to the assessment and taxation of intangible personal property on and after January 1, 1976, and no ad valorem taxes shall be assessed or collected on such property for any period after January 1, 1976.

History. Acts 1977, No. 106, §§ 1, 2; A.S.A. 1947, §§ 84-213, 84-214.

Cross References. Intangible personal property, Ark. Const. Amend. 57.

CASE NOTES**Construction With Other Laws.**

Under the principle that a specific statute controls over a general statute, §§ 26-26-1606 and 26-26-1611, which relate to utilities and which include tangible and intangible property for fixing value, control over this section, which provides that

intangible personal property is exempt from all ad valorem tax levies. *Ozark Gas Pipeline Corp. v. Arkansas Pub. Serv. Comm'n*, 342 Ark. 591, 29 S.W.3d 730 (2000).

Cited: *Bunting v. Tedford*, 261 Ark. 638, 550 S.W.2d 459 (1977).

26-3-303. Parsonages.

Parsonages owned by churches and used as homes for pastors shall be exempt from all taxes on real property, except improvement district taxes.

History. Acts 1945, No. 139, § 1; A.S.A. 1947, § 84-207.

26-3-304. Textile mills.

(a) No person, firm, or corporation shall be required to make or file with any county assessor or taxing authority in this state any return, report, or assessment of any kind as to or against any capital invested in a textile mill in this state for the manufacture of cotton or other fiber goods in any manner for a period of seven (7) years, all such capital being exempted from the provisions of all general taxation and assessment statutes and laws in this state which would otherwise be applicable for the period of seven (7) years.

(b) No taxes shall be assessed, levied upon, or collected on property used exclusively in the business of manufacturing textile goods in a textile mill located in this state for a period of seven (7) years after the location of a mill in this state.

History. Acts 1929, No. 74, § 2; Pope's Dig., § 13586; A.S.A. 1947, § 84-208.

Publisher's Notes. The initial part of Acts 1929, No. 74, § 2, provided for the cancellation of any assessment of textile mills since the adoption of Ark. Const. Amend. 12, and provided for a refund of any taxes paid to a collector, but not yet paid to the treasurer of the county, since the adoption of this constitutional amend-

ment. Near the end of § 2 of the act there is also a provision for no assessment or levy of taxes on mills located in this state for a period of seven years after adoption of the amendment.

Cross References. Exempting new manufacturing establishment from taxation, Ark. Const. Amend. 27.

Textile mills, tax exemption, Ark. Const. Amend. 12.

CASE NOTES**ANALYSIS**

Applicability.

Limited Life Nonwoven Products.

Applicability.

Where on January 1, 1926, capital was already invested in a textile mill in the state, it became exempt from taxation under Ark. Const. Amend. 12. *Wilson v. Monticello Cotton Mills Co.*, 180 Ark. 1090, 24 S.W.2d 324 (1930).

Limited Life Nonwoven Products.

Limited life nonwoven products produced from rayon and polyester fibers

entitled manufacturer to tax exemption provided for in Ark. Const. Amend. 12 and this section, since to restrict the meaning of fiber goods to the products in existence in 1926 when the amendment was passed would require giving the words an extraordinary usage rather than the ordinary and natural meaning the law requires. *Casey v. Scott Paper Co.*, 272 Ark. 312, 613 S.W.2d 821 (1981).

26-3-305. Nonprofit waterworks.

Waterworks systems owned by nonprofit property owners associations are public property used for public purposes and therefore exempt from ad valorem taxation.

History. Acts 1983, No. 332, § 1; A.S.A. 1947, § 84-216.

Cross References. Property taxed according to value, Ark. Const., Art. 16, § 5.

26-3-306. Disabled veterans, surviving spouses, and minor dependent children.

(a)(1)(A)(i) A disabled veteran who has been awarded special monthly compensation by the Department of Veterans Affairs for the loss of, or the loss of use of, one (1) or more limbs, for total blindness in one (1) or both eyes, or for service-connected one hundred percent (100%) total and permanent disability shall be exempt from payment of all state taxes on the homestead and personal property owned by the disabled veteran.

(ii)(a) In the event that the disabled veteran sells his or her home, the exemption shall be prorated to the date of sale so that the disabled veteran shall owe no tax for the portion of the year he or she claimed the home as a homestead, and the purchaser shall be liable only for taxes relating to the balance of the year.

(b) Upon request by the disabled veteran, the county collector shall make such record entries as may be necessary to effect the proration.

(B)(i) Upon the death of the disabled veteran, the surviving spouse and minor dependent children of the disabled veteran shall be exempt from payment of all state taxes on the homestead and personal property owned by the surviving spouse and minor dependent children of the deceased disabled veteran.

(ii) The surviving spouse and minor dependent children of a member of the United States armed forces who was killed while within the scope of his or her military duties, who died while within the scope of his or her military duties, or who is missing in action and the surviving spouse and minor dependent children of a veteran who died from service-connected causes, as certified by the department, shall also be exempt from payment of all state taxes on the homestead and personal property owned by the surviving spouse and minor dependent children.

(iii)(a) The surviving spouse shall be entitled to the exemption provided for in this section so long as the surviving spouse remains unmarried.

(b) The surviving spouse's exemptions provided for in this section are reinstated upon the termination of the surviving spouse's subsequent marriage.

(iv) A surviving spouse of a member of the United States armed forces who died while on active duty shall be eligible for reinstatement of the homestead and personal property tax exemption upon termination of a subsequent marriage and until the surviving spouse remarries.

(v) The exemption provided in this section for surviving minor dependent children shall be available to the surviving children during their minority.

(2) As used in this section, "personal property" means only those items of tangible personal property used for other than a commercial or business purpose.

(b)(1)(A) A disabled veteran eligible for the exemption provided for in this section and desiring to claim an exemption shall furnish to the county collector a letter from the department verifying the fact that the disabled veteran is in receipt of special monthly compensation for the loss of or the loss of use of one (1) or more limbs, total blindness in one (1) or both eyes, or for service-connected one hundred percent (100%) total and permanent disability.

(B)(i) A surviving spouse or minor dependent child of a deceased disabled veteran desiring to claim the exemption provided in this section shall furnish the county collector a letter from the department verifying the fact that the deceased disabled veteran was at the time of death entitled to receive a special monthly compensation for the loss of or the loss of use of one (1) or more limbs, total blindness in one (1) or both eyes, or for service-connected one hundred percent (100%) total and permanent disability.

(ii) In addition to the requirements in subdivision (b)(1)(B)(i) of this section, the surviving spouse or minor dependent child of the deceased disabled veteran shall furnish the county collector with an affidavit signed by the surviving spouse or minor dependent child stating that the surviving spouse or minor dependent child is a surviving spouse or minor dependent child of the named deceased disabled veteran.

(2)(A) The surviving spouse or minor dependent children of a member of the United States armed forces who was killed while within the scope of his or her military duties, who died while within the scope of his or her military duties, or who is missing in action, or a surviving spouse or minor dependent children of a veteran who died of service-connected causes, as certified by the department, desiring to claim the exemption provided in this section shall furnish the county collector a letter from the department certifying the fact that such a member of the United States armed forces is missing in action, was killed while within the scope of his or her military duties, or died while within the scope of his or her military duties or that the veteran died from service-connected causes and the surviving spouse is or would be entitled to department benefits in the form of death indemnity compensation if the surviving spouse were otherwise eligible to receive the department benefits.

(B) In addition, the surviving spouse or minor dependent child shall furnish the county collector with an affidavit signed by the surviving spouse or minor dependent child or the surviving spouse or minor dependent child's guardian stating that the surviving spouse or minor dependent child is a surviving spouse or minor dependent child of the member of the United States armed forces who is missing in action, who was killed while within the scope of his or her military duties, or who died while within the scope of his or her military duties or is the surviving spouse or minor dependent child of a veteran who died of service-connected causes as certified by the department.

(c) Only a disabled veteran and a surviving spouse and minor dependent child of a disabled veteran who are citizens and residents of

the State of Arkansas shall be eligible for the exemption provided in this section.

(d) Any person evading or violating any provision of this section or attempting to secure benefits under this section to which he or she is not entitled shall be guilty of a violation and upon conviction shall be fined in any sum not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

(e) A person claiming the property tax exemption authorized by this section shall not be entitled to claim the property tax credit authorized in § 26-26-1118.

History. Acts 1953, No. 363, §§ 1-4; 1975, No. 196, §§ 1, 2; 1975, No. 319, §§ 1-3; 1975 (Extended Sess., 1976), No. 1220, §§ 1-3; 1977, No. 47, §§ 1, 2; A.S.A. 1947, §§ 84-209 — 84-212; reen. Acts 1987, No. 1010, §§ 1-3; Acts 1989, No. 354, § 1; 2001, No. 361, § 1; 2001, No. 1544, § 1; 2005, No. 1994, § 164; 2007, No. 411, § 1.

A.C.R.C. Notes. Part of this section was reenacted by Acts 1987, No. 1010, §§ 1-3. Acts 1987, No. 834, provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey of Arkansas Law, Taxation, 1 U. Ark. Little Rock L.J. 258.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

CASE NOTES

Claiming Exemption.

Taxes voluntarily paid are not recoverable; where taxpayer voluntarily paid his taxes for the years 1980 through 1986, and claimed no exemption under subdivi-

sion (b)(1)(A) for any one of those years, he was not entitled to a refund. *Rutherford v. Barnes*, 312 Ark. 177, 847 S.W.2d 689 (1993).

26-3-307. [Transferred.]

A.C.R.C. Notes. This section, concerning adaptive medical equipment and disposable medical supplies, has been re-

numbered by Acts 2003, No. 1473, § 64 as § 26-52-433 and § 26-53-141.

26-3-308. Property owned by the State Highway Commission or the State Highway and Transportation Department.

(a) It is hereby found and determined by the Seventy-Eighth General Assembly that all property owned by the Arkansas State Highway Commission or the Arkansas State Highway and Transportation Department is public property used exclusively for public purposes.

(b) Since neither the commission nor the department pursuant to Arkansas Constitution, Article 16, § 5, is required to pay real or personal property taxes on real estate and tangible personal property owned by that commission or department, likewise, notwithstanding any provision of law to the contrary, the commission and department

shall not be required to pay any improvement district assessments that may be assessed against the commission or department as a result of such ownership.

History. Acts 1991, No. 961, § 2.

RESEARCH REFERENCES

ALR. Mining exemption to sales or use tax. 47 A.L.R.4th 1229.

26-3-309. [Transferred.]

A.C.R.C. Notes. This section, concerning fire protection equipment and emergency equipment, has been renumbered by Acts 2003, No. 1473, § 65 as § 26-52-434 and § 26-53-142.

26-3-310. [Transferred.]

A.C.R.C. Notes. This section, concerning wall and floor tile manufacturers, has been renumbered by Acts 2003, No. 1473, § 66 as § 26-52-435 and § 26-53-143.

CHAPTER 4
TAX INCENTIVES

SUBCHAPTER.

- 1. GENERAL PROVISIONS. [RESERVED.]
- 2. MOTION PICTURES.

Cross References. Tax exemptions for certain industries, § 15-4-207.

SUBCHAPTER 1 — GENERAL PROVISIONS
[Reserved]

SUBCHAPTER 2 — MOTION PICTURES

SECTION.

- 26-4-201. Title.
- 26-4-202. Purpose.
- 26-4-203. Definitions.
- 26-4-204. Penalties.
- 26-4-205. Registration.
- 26-4-206. Tax incentive.
- 26-4-207. Expiration date.

SECTION.

- 26-4-208. Application for incentive.
- 26-4-209. Disbursement of benefit.
- 26-4-210. Audit.
- 26-4-211. [Repealed.]
- 26-4-212. Rules and regulations.
- 26-4-213. Disclaimer by state.

Cross References. Financial incentive for the production of motion pictures, § 15-4-2001 et seq.

Effective Dates. Acts 1983, No. 276, § 16: Feb. 25, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the incentive afforded by this Act to the motion picture industry can serve to stimulate the economy of the area in which filming is done; and that the incentive has a multiplier effect, in terms of economic development, in the locality of the filming and statewide; and that tax revenues generated by the activities of motion picture filming more than offset the revenue lost through the incentive provided by this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 1032, § 3: Apr. 14, 1987. Emergency clause provided: "It is hereby found and determined by the Seventy-Sixth General Assembly that restriction in the law requiring the motion picture production company to maintain a checking account, prior to and following its stay in Arkansas, is unnecessary and an undue hardship for those companies seeking to take advantage of the Motion Picture Incentive Act of 1983. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 989, § 6: Apr. 8, 1991. Emergency clause provided: "It is hereby

found and determined by the General Assembly that the changes made by this Act will further attract the motion picture industry into the State of Arkansas; that filming in Arkansas contributes to the economic betterment of the State; and that the sooner this Act goes into effect the sooner we will be able to attract more motion picture filming within the State. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2009, No. 816, § 4: July 31, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas the incentives afforded by this Act to the digital content industry can serve to stimulate the economy of the area in which production and postproduction is performed; and that the incentives have a multiplier effect, in terms of economic development, in the locality of the production and statewide; and that tax revenues generated by the activities of digital content production and postproduction more than offset the revenue lost through the incentives provided by this act. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

26-4-201. Title.

This subchapter may be referred to and cited as the "Motion Picture Incentive Act of 1983".

History. Acts 1983, No. 276, § 1; A.S.A. 1947, § 84-4801.

26-4-202. Purpose.

It is found and determined that:

(1) Arkansas's natural beauty and diverse topography provide a variety of excellent settings from which the motion picture industry might choose a location for filming a motion picture or television program;

(2) Several successful motion pictures have been filmed in Arkansas, due to the unique qualities of the state in terms of natural settings, availability of labor, materials, climate, and hospitality of its people;

(3) The motion picture industry brings with it a much-needed infusion of capital into areas of the state which may be economically depressed;

(4) The multiplier effect of the infusion of capital resulting from the filming of a motion picture or television program serves to stimulate economic activity beyond that immediately apparent on the film set;

(5) Due to the distance of Arkansas from the film industry center on the West Coast and due to this period of economic depression, it is necessary to provide financial incentives to the film industry in order that Arkansas might compete with other states for filming locations; and

(6) Since a significant portion of the cost of a motion picture production will not be eligible for a tax incentive due to the fact that portions of the production are carried out in another state, this subchapter may also serve as an inducement for the motion picture industry to locate operations within the State of Arkansas in order to take advantage of the tax incentive afforded by this subchapter.

History. Acts 1983, No. 276, § 2; A.S.A. 1947, § 84-4802.

26-4-203. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Financial institution" means any bank or savings and loan in the state which carries Federal Deposit Insurance Corporation (FDIC) or Federal Savings and Loan Insurance Corporation (FSLIC) insurance;

(2) "Motion Picture Office" means the division of the Arkansas Economic Development Council charged with the responsibility of promoting and assisting the motion picture industry in Arkansas;

(3) "Motion picture production company" means a company engaged in the business of producing motion pictures intended for a theatrical release or for television viewing;

(4) "Resident" means natural person and includes for the purpose of determining eligibility for the tax incentive provided by this subchapter any person domiciled in the State of Arkansas and any other person who maintains a permanent place of abode within the state and spends in the aggregate more than six (6) months of the taxable year within the state; and

(5) "Revenue Division" means the Revenue Division of the Department of Finance and Administration.

History. Acts 1983, No. 276, § 3; A.S.A. 1947, § 84-4803; Acts 1997, No. 540, § 53.

26-4-204. Penalties.

(a) Any motion picture production company failing to comply with § 26-4-205 may be enjoined from engaging in the business of producing motion pictures in the State of Arkansas by any court of competent jurisdiction until the requirements of that section are met.

(b) Any person, business, or motion picture production company exploiting or attempting to exploit the tax incentive afforded by this subchapter shall be subject to penalty in accordance with applicable state or federal law.

(c) Any motion picture production company attempting to abuse the intent of this subchapter shall be denied any tax incentive to which it would otherwise be entitled and shall be prohibited from applying for any future tax incentive afforded by this subchapter.

History. Acts 1983, No. 276, § 9; A.S.A. 1947, § 84-4809.

26-4-205. Registration.

Each motion picture production company which plans to film any scenes within the borders of the State of Arkansas shall register with the Motion Picture Office prior to the commencement of filming.

History. Acts 1983, No. 276, § 4; A.S.A. 1947, § 84-4804.

26-4-206. Tax incentive.

Any motion picture production company which expends in excess of one million dollars (\$1,000,000) in connection with the filming or production of one (1) or more motion pictures in the State of Arkansas within a twelve-month period or which expends in excess of five hundred thousand dollars (\$500,000) in connection with the filming or production of one (1) motion picture in this state within a six-month period shall, upon making application therefor and meeting other requirements prescribed in this subchapter, be entitled to a tax incentive benefit of five percent (5%) of the funds so expended in Arkansas in connection with the filming or production of a motion picture.

History. Acts 1983, No. 276, § 5; 1985, No. 895, § 1; A.S.A. 1947, § 84-4805; Acts 1991, No. 989, § 1.

CASE NOTES

Cited: Bosworth v. Pledger, 305 Ark. 598, 810 S.W.2d 918 (1991).

26-4-207. Expiration date.

The opportunity for a tax incentive provided by § 26-4-206 shall expire on June 30, 1993.

History. Acts 1983, No. 276, § 12; A.S.A. 1947, § 84-4812.

26-4-208. Application for incentive.

(a) Any motion picture production company that intends to film all or parts of a motion picture in Arkansas and desires to take advantage of the tax incentive provided for in this subchapter shall provide an estimate of total expenditures to be made in Arkansas in connection with the filming or production of the motion picture. The estimate of expenditures shall be filed with the Motion Picture Office prior to the commencement of filming in Arkansas.

(b) At the time the motion picture production company provides the estimate of expenditures to the office, it shall also designate a member or representative of the motion picture production company to work with the office and the Revenue Division of the Department of Finance and Administration on the reporting of expenditures and other information necessary to take advantage of the tax incentive afforded by this subchapter.

(c) Within two (2) weeks after principal photography begins, the motion picture production company shall begin filing weekly expenditure reports. Failure to file weekly expenditure reports may result in a delay in the disbursement of the tax incentive benefit as provided in § 26-4-209. The weekly expenditure report shall be filed in accordance with, but not limited to, the following provisions:

(1) In order to be eligible for the tax incentive provided for by this subchapter, payments shall be made from a checking account from any Arkansas financial institution;

(2) Direct cash payments by the production company to Arkansas vendors, businesses, or citizens hired as cast or crew which are accompanied by receipts shall be allowed if the sum of the cash payments does not exceed forty percent (40%) of the total verifiable expenditures;

(3) Per diem expenditures by the cast or crew for lodging when accompanied by receipts shall be eligible expenditures;

(4) Expenditure reports shall include, but are not limited to, check identification number, date of payment, name of payee, address of payee, amount paid, name of financial institution, and other such information as may be deemed necessary by the division to insure compliance with this subchapter;

(5) Payments for salaries or wages are limited to Arkansas residents who filed an Arkansas income tax return in the previous tax year; and

(6) Payments for penalties or fines, payments to nonprofit organizations, and payments to federal and state entities that do not pay state taxes are to be excluded.

(d) The twelve-month period during which expenditures may qualify for the tax incentive provided by this subchapter begins on the date of the earliest expenditure reported.

(e) Upon completion of filming or production in Arkansas, the motion picture production company shall file an application for the tax incentive afforded by this subchapter. The application shall include a final expenditure report giving a total amount of expenditures which were made in the state in connection with the filming or production of a motion picture and which comply with the provisions of this subchapter. The motion picture production company shall provide documentation for expenditures in accordance with regulations promulgated by the division.

(f) Applications for the tax incentive provided by this subchapter shall be accepted only from those motion picture production companies which report expenditures in the state in excess of one million dollars (\$1,000,000) in connection with the filming or production of one (1) or more motion pictures in the state within a twelve-month period or five hundred thousand dollars (\$500,000) in connection with the filming or production of one (1) motion picture in the state within a six-month period.

(g)(1) When a motion picture production company hires a payroll service company to handle the payroll of a production, the payroll payments otherwise allowable under § 26-4-201 et seq. shall be allowed as eligible expenditures if:

(A) Payments made by the motion picture production company to the payroll service company are paid through an Arkansas financial institution account; and

(B) The payroll checks issued by the payroll service company are drawn on a bank or other entity which is outside the State of Arkansas, and the out-of-state bank or other entity guarantees payment of the checks at an Arkansas financial institution;

(2) When a motion picture production company hires a food catering service company which is outside the State of Arkansas, payments otherwise allowable under § 26-4-201 et seq., which are made by the out-of-state food catering service to food businesses located in Arkansas, shall be allowed as eligible expenditures if actual receipts or copies of invoices from the food businesses located in Arkansas are filed with the weekly expenditure reports and payments made by the motion picture production company to the out-of-state food catering service company are paid through an Arkansas financial institution account; and

(3) Preproduction and postproduction expenses, which otherwise qualify, may be made from a checking account from a financial institution located outside of Arkansas.

History. Acts 1983, No. 276, § 6; 1985, Acts 1987, No. 1032, § 1; 1991, No. 989, No. 895, §§ 2-4; A.S.A. 1947, § 84-4806; § 2.

26-4-209. Disbursement of benefit.

(a) The Revenue Division of the Department of Finance and Administration, upon receipt of an application for a tax incentive, shall:

(1) Calculate the total expenditures of the motion picture production company for which there are documented receipts for funds expended in the state;

(2) Calculate the tax incentive benefit to which the applicant is entitled; and

(3) Certify it to the Chief Fiscal Officer of the State. The division shall certify to the Chief Fiscal Officer of the State the amount to be remitted to the motion picture production company within sixty (60) days of the final expenditure report.

(b) The Chief Fiscal Officer of the State shall remit the five percent (5%) tax incentive benefit to the motion picture production company within ten (10) working days of the receipt of the certification of the amount thereof from the division. The benefit shall be paid from any available funds appropriated for miscellaneous tax refunds by the General Assembly.

History. Acts 1983, No. 276, § 7; A.S.A. 1947, § 84-4807.

26-4-210. Audit.

The Revenue Division of the Department of Finance and Administration may require that reported expenditures and the application for a tax incentive from the motion picture production company be subjected to an audit by division auditors to verify expenditures.

History. Acts 1983, No. 276, § 11; A.S.A. 1947, § 84-4811.

26-4-211. [Repealed.]

Publisher's Notes. This section, concerning the Motion Picture Office Fund, was repealed by Acts 2009, No. 816, § 3. The section was derived from Acts 1983, No. 276, § 8; A.S.A. 1947, § 84-4808.

26-4-212. Rules and regulations.

The Revenue Division of the Department of Finance and Administration shall promulgate appropriate rules and regulations to carry out the intent and purposes of this subchapter and to prevent abuse.

History. Acts 1983, No. 276, § 13; A.S.A. 1947, § 84-4813.

26-4-213. Disclaimer by state.

The State of Arkansas reserves the right to refuse the use of Arkansas's name in the credits of any motion picture filmed or produced in the state.

History. Acts 1983, No. 276, § 10;
A.S.A. 1947, § 84-4810.

CHAPTER 5

MULTISTATE TAX COMPACT

SECTION.

- 26-5-101. Multistate Tax Compact.
- 26-5-102. Election to report tax on basis
of volume percentage.
- 26-5-103. State representative.
- 26-5-104. Advisory committee.

SECTION.

- 26-5-105. Local government committee.
- 26-5-106. Legal counsel.
- 26-5-107. Interstate audit procedures.
- 26-5-108. Authorized forms.

Publisher's Notes. Acts 1967, No. 410, § 7, provided that "nothing in this act shall be deemed to amend, repeal, or modify any of the provisions of the Income Tax Act of 1929 (Acts 1929, No. 118), or laws amendatory thereto, or the provisions of the Uniform Division of Income For Tax Purpose Act (Acts 1961, No. 413), or laws amendatory thereto, or any of the other tax laws of this state, it being the intent of this act that, by the enactment of the Multistate Tax Compact, the General Assembly has established an option, as authorized in this compact, whereby a multistate taxpayer may elect to report and pay taxes in accordance with the existing tax laws of this state or in accordance with the terms of the compact, as the taxpayer may elect."

Effective Dates. Acts 1967, No. 410, § 9: Jan. 1, 1968.

Acts 1968 (1st Ex. Sess.), No. 59, § 3: Feb. 27, 1968. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Multistate Tax Commission is now meeting regularly and formulating policies; that, as the law now stands, the Commissioner of Revenues may only designate as his alternate either the Director of the Income Tax Division or the Director of the Sales Tax Division or the Assistant State Revenue Commissioner; that, at times, it is impossible for any of these three persons

to attend the Multistate Tax Commission meetings; that, in order to give the Commissioner of Revenues a wider latitude in designating his alternate, this Act should become effective immediately. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 401, § 50: Jan. 1, 1980.

Acts 1989, No. 395, § 6: Mar. 7, 1989.

Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the provisions of Arkansas Code of 1987 Annotated § 26-53-101 et seq. do not specifically provide for allowance to be given to persons for similar taxes paid in other states; that the proper and effective administration of the compensating (use) tax will be greatly enhanced by the provisions of a reciprocal tax credit given by the State of Arkansas to purchasers who have previously paid a compensating tax in another state, provided that such other state offers the same tax credit to Arkansas purchasers for tangible personal property brought into the other state; that this act is immediately necessary in order to eliminate the possibility that Arkansas taxpayers will be subject to undue multiple taxation by other states due to the

failure of the states' taxing authorities to equate the Arkansas Gross Receipts Tax to sales tax for purposes of allowing a reciprocal sales tax credit; that this act is also necessary to lessen the administrative burdens on taxpayers whose monthly gross receipts tax liability is relatively small in amount. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and welfare, shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 682, § 3: effective for tax years beginning on or after January 1, 1995.

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

CASE NOTES

ANALYSIS

Constitutionality.
Interstate Carriers.

Constitutionality.

The multistate tax compact does not impermissibly enhance state power at the expense of federal authority, and therefore the congressional approval requirements of U.S. Const., Art. 1, § 10, cl. 3, are inapplicable and the compact is valid without such approval; moreover, instances of unlawful enforcement of the compact, while they might amount to violations of U.S. Const. Amend. 14, are

irrelevant to the facial validity of the compact. *United States Steel Corp. v. Multistate Tax Comm'n*, 434 U.S. 452, 98 S. Ct. 799, 54 L. Ed. 2d 682 (1978).

Interstate Carriers.

Where interstate air freight carrier would be given tax credit by another state under this compact, carrier was not subjected to double taxation because of imposition of compensating tax on aircraft brought to this state for extensive modifications before entering carrier's interstate operations. *Skelton v. Federal Express Corp.*, 259 Ark. 127, 531 S.W.2d 941 (1976) (decision under prior law).

26-5-101. Multistate Tax Compact.

The "Multistate Tax Compact" is enacted into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

MULTISTATE TAX COMPACT

ARTICLE I

Purposes

The purposes of this compact are to:

1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes;
2. Promote uniformity or compatibility in significant components of tax systems;

3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration;
4. Avoid duplicative taxation.

ARTICLE II

Definitions

As used in this compact:

1. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;

2. "Subdivision" means any governmental unit or special district of a state;

3. "Taxpayer" means any corporation, partnership, firm, association, governmental unit or agency, or person acting as a business entity in more than one state;

4. "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one (1) or more forms of which expenses are not specifically and directly related to particular transactions;

5. "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety;

6. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax on income tax;

7. "Sales tax" imposed with respect to the transfer for a consideration of ownership, possession, or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles;

8. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession, or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property and (b) is complementary to a sales tax;

9. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of Articles III, IV, and V of this compact shall apply only to the taxes specifically designated therein, and the provisions of Article IX of this compact shall apply only in respect to determinations pursuant to Article IV.

ARTICLE III

Elements of Income Tax Laws

Taxpayer Option, State and Local Taxes.

1. Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two (2) or more party states may elect to apportion and allocate his income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with Article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this paragraph, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein Article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.

Taxpayer Option, Short Form.

2. Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of one hundred thousand dollars (\$100,000) may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The Multistate Tax Commission, not more than once in five years, may adjust the one hundred thousand dollar (\$100,000) figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the one hundred thousand dollar (\$100,000) figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this paragraph.

Coverage.

3. Nothing in this article relates to the reporting or payment of any tax other than an income tax.

ARTICLE IV

Division of Income

1. As used in this Article, unless the context otherwise requires:

(a) “Business income” means income arising from transactions and activity in the regular course of the taxpayer’s trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer’s regular trade or business operation;

(b) “Commercial domicile” means the principal place from which the trade or business of the taxpayer is directed or managed;

(c) “Compensation” means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services;

(d) [Repealed.]

(e) “Nonbusiness income” means all income other than business income;

(f) “Public utility” means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water, or steam; and (2) whose rates of charges for goods or services have been established or approved by a federal, state, or local government or governmental agency;

(g) “Sales” means all gross receipts of the taxpayer not allocated under paragraphs of this article;

(h) “State” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof;

(i) “This state” means the state in which the relevant tax return is filed or, in the case of application of this article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

2. Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of his income from activities subject to this article, the taxpayer may elect to allocate and apportion his entire net income as provided in this article.

3. For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if (1) in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

4. Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the

extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs 5 through 8 of this article.

5. (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state: (1) if and to the extent that the property is utilized in this state, or (2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

6. (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if (1) the property had a situs in this state at the time of the sale, or (2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

7. Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

8. (a) Patent and copyright royalties are allocable to this state: (1) if and to the extent that the patent or copyright is utilized by the payer in this state, or (2) if and to the extent that the patent copyright is utilized by the payer in the state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

9. All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus double the sales factor, and the denominator of which is four (4).

10. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

11. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight (8) times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from sub-rentals.

12. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

13. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

14. Compensation is paid in this state if:

- (a) The individual's service is performed entirely within the state;
- (b) The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or
- (c) Some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

15. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

16. Sales of tangible personal property are in this state if:

- (a) The property is delivered or shipped to a purchaser, other than the United States Government, within this state regardless of the f.o.b. point or other conditions of the sale; or
- (b) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States Government or (2) the taxpayer is not taxable in the state of the purchaser.

17. Sales, other than sales of tangible personal property, are in this state if:

- (a) The income-producing activity is performed in this state; or
- (b) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

18. If the allocation and apportionment provisions of this Article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (a) Separate accounting;
- (b) The exclusion of any one (1) or more of the factors;
- (c) The inclusion of one (1) or more additional factors which will fairly represent the taxpayer's business activity in this state; or
- (d) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

ARTICLE V

Elements of Sales and Use Tax Laws

Tax Credit.

1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision. For purposes of applying this credit by other states to Arkansas residents, the term "gross receipts tax" as applied to Arkansas residents by Title 26, Chapter 52 of this Code, shall be synonymous with the term "sales tax" as used by the state applying such credit.

Exemption Certificates, Vendors May Rely.

2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

ARTICLE VI

The Commission

Organization and Management.

1.(a) The Multistate Tax Commission is hereby established. It shall be composed of one (1) "member" from each party state who shall be the head of the state agency charged with the administration of the types of

taxes to which this compact applies. If there is more than one (1) such agency the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or his designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under paragraph 1(e) of this article.

(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

(c) Each member shall be entitled to one (1) vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

(d) The commission shall adopt an official seal to be used as it may provide.

(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular, and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The commission shall elect annually, from among its members, a chairman, a vice-chairman, and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix his duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel, or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

(h) The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental entity.

(i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

(j) The commission may establish one or more offices for the transacting of its business.

(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

(l) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount, and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

Committees.

2.(a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven (7) members, including the chairman, vice-chairman, treasurer and four (4) other members elected annually by the commission. The executive committee, subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

(c) The commission may establish such additional committees as its bylaws may provide.

Powers.

3. In addition to powers conferred elsewhere in this compact, the commission shall have power to:

(a) Study state and local tax systems and particular types of state and local taxes;

(b) Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration;

(c) Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws;

(d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

Finance.

4.(a) The commission shall submit to the Governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth (1/10) in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, and sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this paragraph.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under paragraph 1(i) of this article; provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under paragraph 1(i), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VII

Uniform Regulations and Forms

1. Whenever any two (2) or more party states, or subdivisions of party states, have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms. The commission may also act with respect to the provisions of Article IV of this compact.

2. Prior to the adoption of any regulation, the commission shall:

(a) As provided in its bylaws, hold at least one (1) public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings.

(b) Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.

3. The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

ARTICLE VIII

Interstate Audits

1. This article shall be in force only in those party states that specifically provide therefor by statute.

2. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records, or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

3. The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property, or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, he may be required to attend for such purpose at any time and place fixed by the commission within the state of which he is a resident, provided that such state has adopted this article.

4. The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this paragraph apply only to courts in a state that has adopted this article.

5. The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

6. Information obtained by any audit pursuant to this article shall be confidential and available only for tax purposes to party states, their subdivisions, or the United States. Availability of information shall be in accordance with the laws of the states for subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

7. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this article.

8. In no event shall the commission make any charge against a taxpayer for an audit.

9. As used in this article, "tax," in addition to the meaning ascribed to it in Article II, means any tax or license fee imposed in whole or in part for revenue purposes.

ARTICLE IX

Arbitration

1. Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this article in effect, notwithstanding the provisions of Article VII.

2. The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

3. Whenever a taxpayer who has elected to employ Article IV, or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of Article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if he is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject him to double or multiple taxation by two (2) or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.

4. The arbitration board shall be composed of one (1) person selected by the taxpayer, one (1) by the agency or agencies involved, and one (1) member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two (2) persons selected for the board in the manner provided by the foregoing provisions of this paragraph shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if he is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residence within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this paragraph.

5. The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence, or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

6. The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.

7. The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt. The provisions of this paragraph apply only in states that have adopted this article.

8. Unless the parties otherwise agree the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless he is required on account of his service to forego the regular compensation attaching to his public employment, but any such board member shall be entitled to expenses.

9. The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

10. The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board; the board's written statement of its reasons therefor; the record of the board's proceedings; and any other documents required by the arbitration rules of the commission to be filed.

11. The commission shall publish the determinations of boards together with the statements of the reasons therefor.

12. The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

13. Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceeding.

ARTICLE X

Entry Into Force and Withdrawal

1. This compact shall enter into force when enacted into law by any seven (7) states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.

2. Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

3. No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

ARTICLE XI

Effect on Other Laws and Jurisdiction

Nothing in this compact shall be construed to:

(a) Affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement Article III 2 of this compact.

(b) Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax; provided that the definition of "tax" in Article VIII 9 may apply for the purposes of that article and the commission's powers of study and recommendation pursuant to Article VI 3 may apply.

(c) Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation,

or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.

(d) Supersede or limit the jurisdiction of any court of the United States.

ARTICLE XII

Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

History. Acts 1967, No. 410, § 1; A.S.A. 1947, § 84-4101; Acts 1989, No. 395, § 1; 1989, No. 494, §§ 2, 4; 1995, No. 682, § 1. **Effective Dates.** Acts 1995, No. 682, § 3: effective for tax years beginning on or after January 1, 1995.

RESEARCH REFERENCES

Ark. L. Rev. Case Note, Pledger v. Illinois Tool Works, Inc.: Arkansas Belatedly Recognizes the Unitary Business Principle as a Limitation of Its Power to Tax Capital Gains of Nondomiciliary Corporations, 45 Ark. L. Rev. 597.

CASE NOTES

Cited: Pledger v. Brunner & Lay, Inc., 308 Ark. 512, 825 S.W.2d 599 (1992).

26-5-102. Election to report tax on basis of volume percentage.

(a) Every taxpayer required to file an income tax return pursuant to provisions of the Income Tax Act, § 26-51-101 et seq., whose only activity within this state consists of sales and does not include owning or renting real estate or tangible personal property in this state and whose dollar volume of gross sales made during the last year within the State of Arkansas or its subdivisions, as the case may be, is not in excess of one hundred thousand dollars (\$100,000) may elect to report any tax due the State of Arkansas on the basis of a percentage of this volume, and the Director of the Department of Finance and Administration is authorized to adopt rates which are calculated to produce a

tax thereon which reasonably approximates the tax otherwise due under the laws of this state from these taxpayers.

(b) In the event the Multistate Tax Commission shall adjust the one hundred thousand dollar (\$100,000) figure provided in this section in the manner authorized in the Multistate Tax Compact, § 26-5-101, the adjusted figure shall replace the one hundred thousand dollar (\$100,000) figure provided in this section.

History. Acts 1967, No. 410, § 2; A.S.A. 1947, § 84-4102.

26-5-103. State representative.

The Director of the Department of Finance and Administration of the State of Arkansas shall represent this state on the Multistate Tax Commission. The director may, with the approval of the Governor, designate an alternate to serve on the commission in his or her place if there is on file with the commission written notification of the designation and the identity of the alternate.

History. Acts 1967, No. 410, § 3; 1968 (1st Ex. Sess.), No. 59, § 1; A.S.A. 1947, § 84-4103.

26-5-104. Advisory committee.

(a) There is established a Multistate Tax Compact Advisory Committee of this state composed of:

- (1) The member of the Multistate Tax Commission representing this state or any alternate designated by him or her;
- (2) The Attorney General or his or her designee;
- (3) Two (2) members of the Senate appointed by the President Pro Tempore of the Senate; and
- (4) Two (2) members of the House of Representatives appointed by the Speaker of the House of Representatives.

(b) The chair of the advisory committee shall be the member of the commission representing this state.

(c)(1) The committee shall meet on the call of its chair or at the request of a majority of its members, but, in any event, it shall meet not less than one (1) time each year.

(2) The committee may consider any and all matters relating to recommendations of the commission and the activities of the members in representing this state on it.

History. Acts 1967, No. 410, § 5; A.S.A. 1947, § 84-4105; Acts 1995, No. 1160, § 14.

26-5-105. Local government committee.

(a) The Governor, after consultation with representatives of local governments, may appoint a committee of three (3) persons who are representative of subdivisions of this state affected, or likely to be affected, by the Multistate Tax Compact, § 26-5-101.

(b) The member representing this state on the Multistate Tax Commission, or any alternate designated by him or her to serve on the commission, shall consult regularly with these appointees, if they are named, in accordance with Article VI 1(b) of the compact.

History. Acts 1967, No. 410, § 4; A.S.A. 1947, § 84-4104.

26-5-106. Legal counsel.

The chief attorney of the Revenue Division of the Department of Finance and Administration is designated as counsel to represent this state at meetings of the Multistate Tax Commission. However, the Director of the Department of Finance and Administration may request the Attorney General of this state to attend meetings of the commission or to designate one (1) of his or her assistant attorneys general to attend commission meetings.

History. Acts 1967, No. 410, § 4; A.S.A. 1947, § 84-4104.

26-5-107. Interstate audit procedures.

The provisions of Article VIII of the Multistate Tax Compact, § 26-5-101, pertaining to interstate audits, shall not be applicable to this state unless the Director of the Department of Finance and Administration shall, with the approval of the Governor, determine that compliance with the interstate audits procedures would be in the better interest of this state and shall notify the commission of this fact in writing.

History. Acts 1967, No. 410, § 6; 1979, No. 401, § 46; A.S.A. 1947, § 84-4106.

26-5-108. Authorized forms.

The Director of the Department of Finance and Administration is authorized to adopt and use forms promulgated by the Multistate Tax Commission pursuant to Article VII of the Multistate Tax Compact, § 26-5-101.

History. Acts 1967, No. 410, § 6; 1979, No. 401, § 46; A.S.A. 1947, § 84-4106.

CHAPTERS 6-15

[Reserved]

SUBTITLE 2. ADMINISTRATION OF STATE TAXES

CHAPTER 16
GENERAL PROVISIONS

[Reserved]

CHAPTER 17
REVENUE DIVISION

SUBCHAPTER.

- 1. GENERAL PROVISIONS. [RESERVED.]
- 2. STAFF PERSONNEL.
- 3. POWERS AND DUTIES.
- 4. RECIPROCAL PACTS AND AGREEMENTS.
- 5. COLLECTION OF REVENUES.

RESEARCH REFERENCES

ALR. Estoppel of state or local govern-
ment in tax matters. 21 A.L.R.4th 573.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — STAFF PERSONNEL

SECTION.

- 26-17-201. Authority to employ.
- 26-17-202. Attorneys.

SECTION.

- 26-17-203. Field auditors.
- 26-17-204. Bond.

Effective Dates. Acts 1935, No. 131, § 5: approved Mar. 19, 1935. Emergency clause provided: "It is hereby declared that certain defects in the law defining the duties of the Commissioner of Revenues of the State of Arkansas should be immediately corrected so that all litigation wherein the State of Arkansas is a party

at interest can be more properly prosecuted; that this Act is essential to the immediate preservation of the public health, peace and safety; an emergency is hereby declared and this Act shall take effect and be in full force and effect from and after its passage."

26-17-201. Authority to employ.

The Director of the Department of Finance and Administration shall employ such clerical and legal assistants as he or she may deem necessary for the proper function of the Revenue Division of the Department of Finance and Administration.

History. Acts 1935, No. 131, § 3; Pope's Dig., § 13355; A.S.A. 1947, § 84-1721.

26-17-202. Attorneys.

(a) The Director of the Department of Finance and Administration shall employ one (1) or more attorneys for the Revenue Division of the Department of Finance and Administration if he or she deems it necessary and if a saving of money can be had by employing one (1) or more attorneys for the division.

(b) Each division attorney may maintain and defend the interests of the division in matters before:

- (1) Administrative bodies;
- (2) Arkansas trial courts;
- (3) The Court of Appeals;
- (4) The Supreme Court;
- (5) The United States Supreme Court; and
- (6) All other federal courts.

History. Acts 1935, No. 131, § 3; Pope's Dig., § 13355; A.S.A. 1947, § 84-1721; Acts 2001, No. 456, § 1.

Cross References. Suits by the Department of Finance and Administration, § 26-17-304.

26-17-203. Field auditors.

It shall be the duty of the Director of the Department of Finance and Administration in selecting field auditors to be employed by the Revenue Division of the Department of Finance and Administration to require that the applicants meet the following qualifications:

(1) That he or she is a college graduate with a degree in accounting, business, or related field with a minimum of twenty-four (24) hours of accounting. Accounting experience may be substituted for part or all of the basic requirement;

(2) That he or she is of good moral character and bears a good reputation for honesty and trustworthiness;

(3) That he or she is in a good state of physical health that will enable him or her to properly discharge his or her duties;

(4) That he or she has a valid Arkansas driver's license and is in good standing with the Office of Driver Services.

History. Acts 1949, No. 154, § 1; 1979, No. 485, § 1; A.S.A. 1947, § 84-1728.

26-17-204. Bond.

All deputy commissioners and other employees of the Revenue Division of the Department of Finance and Administration collecting or handling funds shall be placed under bond, premium on which shall be paid by the state upon vouchers issued by the Director of the Department of Finance and Administration payable out of funds appropriated for that purpose.

History. Acts 1935, No. 234, § 5; Pope’s Dig., § 13349; A.S.A. 1947, § 84-1714.
A.C.R.C. Notes. The operation of this section was suspended by adoption of a self-insured fidelity bond program for pub-

lic officers, officials and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The section may again become effective upon cessation of coverage under that program. See § 21-2-703.

SUBCHAPTER 3 — POWERS AND DUTIES

SECTION.
26-17-301. Performance required.
26-17-302. Motor vehicle license fees.

SECTION.
26-17-303. Petroleum products.
26-17-304. Suits and other proceedings.

Effective Dates. Acts 1933, No. 12, § 11: approved Feb. 3, 1933. Emergency clause provided: “As this act affects the operation of the state government, and will effect economies that are absolutely necessary for the proper functioning of the government, an emergency is hereby declared, and this act shall take effect and be in force from and after its passage.”
Acts 1935, No. 131, § 5: approved Mar. 19, 1935. Emergency clause provided: “It is hereby declared that certain defects in

the law defining the duties of the Commissioner of Revenues of the State of Arkansas should be immediately corrected so that all litigation wherein the State of Arkansas is a party at interest can be more properly prosecuted; that this Act is essential to the immediate preservation of the public health, peace and safety; an emergency is hereby declared and this Act shall take effect and be in full force and effect from and after its passage.”

26-17-301. Performance required.

All of the employees of the Revenue Division of the Department of Finance and Administration shall perform such duties and respond to such directions as the Director of the Department of Finance and Administration from time to time may enjoin.

History. Acts 1935, No. 234, § 3; Pope’s Dig., § 13347; A.S.A. 1947, § 84-1712.

26-17-302. Motor vehicle license fees.

The Director of the Department of Finance and Administration shall collect the motor vehicle license fees prescribed by law, and he or she is empowered to make and enforce the necessary rules and regulations to ensure those collections.

History. Acts 1933, No. 94, § 1; Pope's Dig., § 13357; A.S.A. 1947, § 84-1707.

CASE NOTES

Repeal of Prior Law.

Acts 1929, No. 65, §§ 29-33, charging the sheriff with the collection of the motor

vehicle tax, was impliedly repealed by this section. *Curlin v. Watson*, 187 Ark. 685, 61 S.W.2d 701 (1933).

26-17-303. Petroleum products.

Inspection of petroleum oils and products required to be made by law shall devolve on the Director of the Department of Finance and Administration who shall collect the fees therefor provided by law.

History. Acts 1933, No. 12, § 5; Pope's Dig., § 13356; A.S.A. 1947, § 84-1706.

Cross References. Inspection of oil products, § 15-74-401 et seq.

26-17-304. Suits and other proceedings.

(a)(1)(A) The Director of the Department of Finance and Administration may:

(i) Institute and prosecute in his or her name as such all suits and other proceedings necessary for the collection of any taxes or fees collectible by him or her and which have become delinquent; and

(ii) Defend all suits and other proceedings concerning taxes, fees, or licenses administered by the director.

(B) All suits and proceedings instituted by the director or defended by the director that concern taxes, fees, or licenses administered by the Revenue Division of the Department of Finance and Administration may be maintained or defended by an attorney authorized to represent the interests of the division pursuant to § 26-17-202.

(2) No deposits of advance cost shall be required of the director in any suit or proceedings, nor shall he or she be required to give bond for cost, indemnity, or stay as a condition to the institution of any suit or proceedings or to the issuance, service, or execution of any process in any suit or proceedings or ancillary to any suit or proceedings or to the appeal from any adverse action.

(b)(1) The director shall not be required to advance or pay any court costs to any court clerk for the institution or prosecution of any suit filed in his or her official capacity.

(2) No bond shall be required of the director in obtaining restraining orders, injunctions, or any other cases in which a bond is required to be made by a litigant, including supersedeas bond upon appeal.

History. Acts 1935, No. 131, § 2; 1935, 13354; A.S.A. 1947, §§ 84-1718, 84-1720; No. 234, § 8; Pope's Dig., §§ 13352, Acts 2001, No. 456, § 2.

SUBCHAPTER 4 — RECIPROCAL PACTS AND AGREEMENTS

SECTION.

26-17-401. Penalty.

26-17-402. Authority to enter agreements.

SECTION.

26-17-403. Powers and duties.

26-17-404. Violations.

Effective Dates. Acts 1949, No. 144, § 6: Feb. 23, 1949. Emergency clause provided: "Because of the doubtful authority heretofore possessed by agents of the Revenue Department, many tax violations may not be properly prosecuted; and this Act, being necessary to provide better en-

forcement of tax laws, is therefore necessary for preservation of the public peace, health and safety, an emergency is hereby declared and this Act shall be and remain in full force and effect from and after its passage and approval."

26-17-401. Penalty.

(a) Any person, firm, or corporation found guilty of violating provisions of this subchapter and any person, firm, or corporation that shall willfully evade or willfully fail to pay any Arkansas tax except ad valorem taxes on real estate as provided by law shall be guilty of a misdemeanor.

(b)(1) Any person convicted shall be fined in any sum not less than twenty-five dollars (\$25.00) nor more than five thousand dollars (\$5,000).

(2) Any person, firm, or corporation so convicted shall, as a part of the penalty of the conviction, pay to the state a sum equal to three (3) times the amount of taxes avoided.

(3) Any person or company official so convicted shall be punished by imprisonment in the county jail for a period of not to exceed six (6) months.

(c) Each transaction shall constitute a separate offense.

History. Acts 1949, No. 144, § 4; A.S.A. 1947, § 84-1734.

26-17-402. Authority to enter agreements.

The Director of the Department of Finance and Administration is authorized and empowered, on behalf of the State of Arkansas, to enter into reciprocal pacts and agreements with other states and with the government of the United States for the exchange of information and copies of public and private records, documents, books, and all other matters relative to taxes in which any state may be interested if the state or United States government is a party to such an agreement or pact.

History. Acts 1949, No. 144, § 1; A.S.A. 1947, § 84-1731.

26-17-403. Powers and duties.

The Director of the Department of Finance and Administration and his or her agents are authorized and empowered to perform the duties necessary to comply with any pact or agreement with any other state or with the government of the United States as provided:

(1) Upon request of any state or government of the United States that is a party to a reciprocal pact or agreement with the State of Arkansas, the director and his or her agents are empowered to furnish such information from public or private records as may be requested by a state;

(2) The director and his or her agents in the performance of these duties are empowered to require any person, firm, or corporation to make records available to the director for examination and copying. These records shall be available to the director or his or her agents at all reasonable times;

(3) The director and his or her agents are empowered to question any person with reference to any matter involving Arkansas taxes or the taxes of any state or government of the United States with which the State of Arkansas may be a party to a pact or agreement for exchange of tax information if the state or government of the United States shall request assistance of the State of Arkansas in obtaining information. The director and his or her agents are empowered to take depositions or written sworn statements in the performance of these duties. All persons, firms, or corporations shall, upon demand of the director or his or her agents, supply full and accurate information. That information shall not be used against the person, firm, or corporation supplying the information in any grand jury investigation, indictment, or trial of any person, firm, or corporation involving violation of tax laws, it being the intent of this provision to comply fully with constitutional rights guaranteed to defendants which permit defendants to refrain from giving information or testimony against themselves;

(4) The director and his or her agents shall not be empowered to make arrests of persons in Arkansas charged with violating tax laws of other states, unless those persons shall have been charged in the courts of other states with such offenses and notices thereof, together with a certified copy of the charges, shall have been transmitted to the director. Any person so arrested shall be permitted to maintain all rights relative to extradition of prisoners.

History. Acts 1949, No. 144, § 2; A.S.A. 1947, § 84-1732.

26-17-404. Violations.

Any Arkansas person, firm, or corporation that willfully aids or willfully abets a person, firm, or corporation in the violations of any tax laws in any state with which Arkansas shall have entered an agreement or pact, as provided in this subchapter, shall be guilty of violating provisions of this subchapter and shall be punished as provided in this subchapter.

History. Acts 1949, No. 144, § 3; A.S.A. 1947, § 84-1733.

SUBCHAPTER 5 — COLLECTION OF REVENUES**SECTION.**

26-17-501. Penalty.

26-17-502. Duty to remit revenues.

SECTION.

26-17-503. Daily remittance.

26-17-504. Deposits and collections.

Effective Dates. Acts 1925, No. 88, § 24: effective on passage.

Acts 1927, No. 115, § 18: approved Mar. 5, 1927. Emergency clause provided: "It is ascertained and hereby declared that the increasing number of fires in this State is a menace to the public welfare; that the necessity for a more rigid enforcement of

the Insurance Laws and the prevention of fires is so urgent that the immediate operation of this Act is essential for the protection of the public safety; an emergency, therefore, is declared to exist, and this Act shall take effect and be in force and effect from and after its passage."

26-17-501. Penalty.

(a) If the Director of the Department of Finance and Administration, or any of his or her deputies or assistants shall collect or receive any tax, revenue, or funds by virtue of his or her official duties or position and shall neglect or fail to turn them over to the Treasurer of State within ten (10) days after the tax, revenue, or funds shall have come into his or her hands or possession, the offender shall be deemed guilty of a felony and be punished by confinement in the state penitentiary for a period of not less than one (1) year and not more than five (5) years.

(b) The director shall be liable upon his or her official bond for all funds not turned into the Treasurer of State within ten (10) days after they may come into the hands of the director or any of his or her deputies or assistants.

History. Acts 1925, No. 88, § 16; 1927, No. 115, § 15; Pope's Dig., §§ 7629, 13343; A.S.A. 1947, § 84-1715.

26-17-502. Duty to remit revenues.

The Director of the Department of Finance and Administration shall turn over to the Treasurer of State all revenues that may come into his or her possession or into the possession of any of his or her deputies, promptly on the day the funds reach his or her office unless received after the office of the Treasurer of State shall have closed for the day, in which event the funds shall be turned over to the Treasurer of State on the first day the Treasurer of State's office is open after the funds are received at the office of the director.

History. Acts 1925, No. 88, § 16; 1927, No. 115, § 15; Pope's Dig., §§ 7629, 13343; A.S.A. 1947, § 84-1715.

26-17-503. Daily remittance.

All collectors and field inspectors shall daily report and remit to the Director of the Department of Finance and Administration all collections made by them.

History. Acts 1935, No. 234, § 5; Pope's Dig., § 13349; A.S.A. 1947, § 84-1714.

26-17-504. Deposits and collections.

(a) The Director of the Department of Finance and Administration shall make daily deposits into the State Treasury of all moneys and checks collected by him or her.

(b) The Treasurer of State shall promptly return to the director all checks which for any reason were not paid, and it shall be the duty of the director to collect all such checks.

History. Acts 1935, No. 234, § 6; Pope's Dig., § 13350; A.S.A. 1947, § 84-1716.

CHAPTER 18

STATE TAX PROCEDURE GENERALLY

SUBCHAPTER.

1. GENERAL PROVISIONS.
 2. PENALTIES AND OFFENSES.
 3. ADMINISTRATION GENERALLY.
 4. ASSESSMENTS.
 5. LIABILITY AND PAYMENT.
 6. LICENSES, PERMITS, AND REGISTRATIONS.
 7. ENFORCEMENT.
 8. TAXPAYER BILL OF RIGHTS.
 9. TAXPAYER ASSISTANCE.
 10. BUSINESS CLOSURE.
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A.C.R.C. Notes. References to “this chapter” in subchapters 1-8 may not apply to subchapter 9 which was enacted subse-

quently.

Effective Dates. Acts 1979, No. 401, § 50: Jan. 1, 1980.

RESEARCH REFERENCES

ALR. Estoppel of state or local government in tax matters. 21 A.L.R.4th 573.

Recovery of tax paid on exempt property. 25 A.L.R.4th 186.

CASE NOTES

Cited: Land O’Frost, Inc. v. Pledger, 308 Ark. 208, 823 S.W.2d 887 (1992);

Pledger v. Arkla, Inc., 309 Ark. 10, 827 S.W.2d 126 (1992).

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

26-18-101. Title.

26-18-102. Purpose.

26-18-103. Construction.

SECTION.

26-18-104. Definitions.

26-18-105. Date of performance.

A.C.R.C. Notes. Acts 1997, No. 1139, § 10, provided: “The General Assembly intends, by the passage of this amendment to the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq., to clarify its intent that taxpayers involved in state tax disputes with the Arkansas Department of Finance and Administration shall have, as much as possible, the opportunity to secure an objective review of their dispute by a court at law through: (1) the posting of bond method; (2) the payment after assessment method; or (3) the claim for refund method, after the payment by the taxpayer of all state taxes claimed to be due from the taxpayer for at least one complete taxable period involved in the audit period. It is also intended by the General Assembly that the courts of this state are to recognize the ‘divisible tax theory’ applicable to the review of federal tax dispute by federal courts, as also being applicable to the review of state tax disputes by the courts of this state.”

Effective Dates. Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to main-

tain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 2003 (2nd Ex. Sess.), No. 46, § 2, provided: “This act becomes effective on July 1, 2004.”

Acts 2009, No. 360, § 4: July 1, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that many businesses required to report and remit Arkansas gross receipts taxes as well as employee withholding taxes often discontinue payment of withholding taxes when faced with the possible closure of the business for failure to report and remit the gross receipts taxes; that business faced with the potential closure for failure to remit gross receipts taxes will often avoid closure by paying the delinquent gross receipts or compensating use tax with the withholding tax collected from employees of the business; and that this act is necessary to stop the loss of the withholding tax. Therefore, an emergency is declared

to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2009.”

CASE NOTES

Constitutionality.

The Tax Procedure Act is not unconstitutional because it fails to require that the state give taxpayers actual notice of the

entire appeals procedure for protesting and appealing tax assessments. *Ross v. Martin*, 800 F.2d 808 (8th Cir. 1986).

26-18-101. Title.

This chapter shall be known and may be cited as the “Arkansas Tax Procedure Act”.

History. Acts 1979, No. 401, § 1; A.S.A. 1947, § 84-4701.

Publisher’s Notes. Acts 1987, No. 382, § 2, provided that the purpose of this act is to make technical amendments to the Income Tax Act of 1929, Acts 1929, No. 118, as amended and to the Arkansas Tax Procedure Act, Acts 1979, No. 401, as

amended, to make the Arkansas income tax and the tax procedure statutes conform to several recent amendments to their counterparts in the federal income tax statutes, to eliminate procedural problems that have arisen since the enactment of these acts, and for other purposes.

CASE NOTES

Cited: *Ragland v. Pittman Garden Ctr., Inc.*, 299 Ark. 293, 772 S.W.2d 331 (1989).

26-18-102. Purpose.

The purpose of this chapter is to provide, as far as possible, uniform procedures and remedies with respect to all state taxes except the following:

- (1) Certificates of Title — Registration — Anti Theft Provision, § 27-14-101 et seq.;
- (2) Motor Vehicle License and Fees, §§ 26-55-101 and 27-14-305, § 27-14-501 et seq., and § 27-15-401 et seq.[repealed];
- (3) Operator and Chauffeur License, § 27-16-101 et seq.;
- (4) Traffic on Highways — Definition — General Provision, §§ 27-49-102, 27-49-104 — 27-49-112, and 27-49-201 et seq.;
- (5) Arkansas Racing Commission — Horse Racing, the Arkansas Horse Racing Law, §§ 23-110-101 et seq.;
- (6) Dog Races, the Arkansas Greyhound Racing Law, § 23-111-101 et seq.;
- (7) Boxing and Wrestling Exhibitions, §§ 17-22-201 — 17-22-205 and 17-22-301 et seq.; and
- (8) Ad valorem taxes collected pursuant to § 26-26-1614.

History. Acts 1979, No. 401, § 2; A.S.A. 1947, § 84-4702; Acts 2003, No. 831, § 1.

A.C.R.C. Notes. Former § 27-15-401 et seq. referred to in subdivision (2) of this

section, concerning special license plates for disabled veterans, was repealed by Acts 2005, No. 2202, § 2.

CASE NOTES

Cited: Owens v. State, 354 Ark. 644, 128 S.W.3d 445 (2003).

26-18-103. Construction.

Unless otherwise expressly provided in any state law hereafter enacted, the provisions of this chapter are to be read in *pari materia* with all other state laws, and in the event of conflict with any state law, this chapter shall control.

History. Acts 1979, No. 401, § 2; A.S.A. 1947, § 84-4702.

26-18-104. Definitions.

As used in this chapter:

(1) "Assessment" means the determination and imposition of the amount of any state tax due and owing, whether made on a return filed by a taxpayer or by the Director of the Department of Finance and Administration on audit or otherwise;

(2) "Corporation" means an organization, other than a partnership, defined as follows:

(A) Created or organized under the laws of Arkansas; or

(B) Qualified to do or doing business in Arkansas, whether or not for profit, in a corporate or organized capacity, by virtue of creation or organization under the laws of the United States or some state, territory, district, or of a foreign country;

(C) Associations, joint-stock companies, insurance companies, including surety and bond companies;

(D) Unless otherwise expressly stated, common law or statutory trusts;

(E) All other business organizations or entities which are organized for profit when the business is conducted by a trustee, or when the interest or ownership in the business is evidenced by a certificate, declaration of trust, or other written instrument; and

(F) National banking associations, state banks, and trust companies, state or national savings and loan associations, or building and loan associations;

(3) "Decision of the director" means any order, ruling, finding, regulation, or action taken by the director in the administration and enforcement of any state tax law;

(4) "Director" means the Director of the Department of Finance and Administration, State of Arkansas, or the Administrative Assistant for Revenue, or his or her authorized agent;

(5) "Excise tax" means any state tax other than an individual, corporate, or fiduciary income tax;

(6) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any other person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate;

(7) "Individual" means a natural person;

(8) "Noncompliant taxpayer" means any taxpayer who has failed to:

(A) File two (2) returns during any consecutive twenty-four-month period for:

(i) Gross receipts or compensating use tax; or

(ii) State income tax withholding for employees; or

(B) Pay the tax reported on the tax return or determined by the Department of Finance and Administration to be due for any two (2) months during any consecutive twenty-four-month period for:

(i) Gross receipts or compensating use tax; or

(ii) State income tax withholding for employees;

(9) "Overpayment" means the amount of any state tax paid in excess of the amount required to be paid under the particular state tax law in question;

(10)(A) "Partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not a trust or estate or classed as a corporation within the provisions of this chapter.

(B) "Partner" includes a member of a syndicate, group, pool, joint venture, or organization;

(11)(A) "Person" means an individual, trust, estate, fiduciary, firm, partnership, limited liability company, or corporation.

(B) "Person" shall include:

(i) The directors, officers, agents, and employees of any person;

(ii) Beneficiaries, members, managers, and partners; and

(iii) Any county or municipal subdivision of the state;

(12)(A) "Return" means any tax or information return, report, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of any state tax law which is filed with the director by, on behalf of, or with respect to any person, and any amendment or supplement to a tax or information return, report, declaration of estimated tax, or claim for refund, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

(B) "Return" does not include:

(i) An application for any motor vehicle registration or license or any operator's or chauffeur's license;

(ii) A list showing the issuance of any motor vehicle registration or license or any operator's or chauffeur's license; or

(iii) Any information relating to any motor vehicle registration or license or any operator's or chauffeur's license;

(13) "State tax" means any tax, or any fee for a license, permit, or registration which is payable to, collected by, or administered by the

Revenue Division of the Department of Finance and Administration, State of Arkansas;

(14) “State tax law” means this chapter and any other law of the State of Arkansas which levies, imposes, or relates procedurally or otherwise to any state tax;

(15) “Tax deficiency” or “deficiency” means the amount by which the tax imposed by any state tax exceeds the excess of the sum of:

(A) The amount shown as the tax by the taxpayer on his or her return if a return was made by the taxpayer; plus

(B) The amounts previously assessed or collected without assessment as a deficiency;

(16) “Taxpayer” means:

(A) Any person subject to or liable for any state tax;

(B) Any person required to file a return, to pay, or to withhold and remit any tax required by the provisions of any state tax law;

(C) Any person required to obtain a license or a permit or to keep any records under any state tax law; or

(D) Any person who files a return and pays a reported tax without regard to whether he or she was required to file the return;

(17)(A) “Tax return preparer” means any person who prepares for compensation, or who employs one (1) or more persons to prepare for compensation, any state tax return or claim for refund.

(B) For purposes of this subdivision (17), the preparation of a substantial portion of a return or claim for refund shall be treated as if it were the preparation of the return or claim for refund; and

(18) “Underpayment” means the difference between the state tax paid and the amount required to be paid under the particular state tax law in question.

History. Acts 1979, No. 401, § 3; A.S.A. 1947, § 84-4703; Acts 1993, No. 332, § 3; 1995, No. 1160, § 16; 2003, No. 1718, § 1; 2003 (2nd Ex. Sess.), No. 46, § 1; 2009, No. 360, § 1.

Amendments. The 2009 amendment,

in (8), deleted “gross receipts or compensating use tax” following “two (2)” in (8)(A), inserted (8)(A)(i) and (ii), deleted “gross receipts or use” following “Pay the” in (8)(B), inserted (8)(B)(i) and (ii), and made related changes.

CASE NOTES

ANALYSIS

Construction.
Taxpayer.

Construction.

An estimated tax return is a tax return within the meaning of subdivision (12). *Dixie Furn. Co. v. Ragland*, 300 Ark. 69, 776 S.W.2d 357 (1989).

Taxpayer.

Trial court did not err in denying car manufacturer a refund or deduction of the

pro rata portion of gross receipts tax related to bad debts arising out of the sale and financing of motor vehicles as the car manufacturer was not a “taxpayer” for the purposes of the Arkansas Bad Debt Statute, § 26-52-309. *DaimlerChrysler Servs. N. Am., LLC v. Weiss*, 360 Ark. 188, 200 S.W.3d 405 (2004).

Cited: *Ragland v. Alpha Aviation, Inc.*, 285 Ark. 182, 686 S.W.2d 391 (1985); *Axiom Corp. v. Leathers*, 331 Ark. 205, 961 S.W.2d 735 (1998); *Owens v. State*, 354 Ark. 644, 128 S.W.3d 445 (2003);

Weiss v. Am. Honda Fin. Corp., 360 Ark. 208, 200 S.W.3d 381 (2004).

26-18-105. Date of performance.

(a)(1) If any return, claim, statement, or other document required to be filed within a prescribed period or on or before a prescribed date under any state tax law is, after that period or date, delivered by the United States mail to the director, the date of the United States postmark stamped on the cover of the return, claim, statement, or other document shall be deemed to be the date of delivery.

(2) Only the postmark of the United States Postal Service, rather than those of private postage meters, shall qualify for the provisions of this section.

(b) When the last day prescribed under the authority of state tax laws for performing any act or instituting any suit falls on Saturday, Sunday, or a legal holiday, the performance of the act shall be considered timely if it is performed on the next succeeding business day which is not a Saturday, Sunday, or legal holiday.

History. Acts 1979, No. 401, § 27; A.S.A. 1947, § 84-4727.

CASE NOTES

Cited: Farmers Coop. v. State, 282 Ark. 434, 669 S.W.2d 440 (1984).

SUBCHAPTER 2 — PENALTIES AND OFFENSES

SECTION.

- 26-18-201. Attempt to evade or defeat tax.
- 26-18-202. Failure to pay or file return.
- 26-18-203. False or fraudulent reports, etc.
- 26-18-204. False answers to questions or affidavits.
- 26-18-205. Failure to obey summons.
- 26-18-206. Conduct of business without license.
- 26-18-207. Continuance of business after forfeiture of bond.

SECTION.

- 26-18-208. Additional penalties and tax.
- 26-18-209. Evading or defeating tax — Accomplice liability.
- 26-18-210. Prosecutions — Where permitted.
- 26-18-211. Failure to correct noncompliance after notification.
- 26-18-212. Failure to file a return after notification.

Cross References. Fines, § 5-4-201. Imprisonment, § 5-4-401.

Effective Dates. Acts 1981, No. 914, § 9: Dec. 31, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain provisions of the State's income tax laws that have counterparts in the Federal income

tax laws do not coincide with recent amendments to the Federal income tax laws; that clarification needs to be made to provisions of the Arkansas Tax Procedure Act (Act 401 of 1979) with regard to the statute of limitations on assessments, the judicial review of contested assessments and the automatic assertion of the

10% negligence penalty (as apparently approved by the Supreme Court in its decision in *Great Lakes Chemical Co. v. Wooten*, 266 Ark. 511, 514 (1979) which decision was rendered after the adoption by the General Assembly of Act 401 of 1979, but before the effective date of that Act); and that this Act is immediately necessary to make the Arkansas income tax law conform with the Federal income tax law, to clarify any possible question as to the applicability of the Statute of Limitations on assessment and judicial review of contested assessments, and to stop the automatic assessment of the 10% negligence penalty on any deficiency in tax determined by the Commissioner. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect for all periods beginning after December 31, 1980."

Acts 1987, No. 502, § 16: Apr. 1, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State of Arkansas is in great need of additional general revenues and that providing a tax penalty amnesty program will result in a substantial addition to the generation of such much needed general revenues. It is further found and determined that certain criminal and civil penalties provided for in the Arkansas Tax Procedure Act must be made more severe to effectuate the collection of taxes owed under the laws of this State. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 826, § 36, provided that the provisions of that act shall be in full force and effect for all income years beginning on or after January 1, 1989.

Acts 1991, No. 815, § 3, provided: "The provisions of this act shall be in full force and effect for all income years beginning on and after January 1, 1991."

Acts 1991, No. 3, § 14: May 1, 1991. Emergency clause provided: "It is hereby found and determined that the State of Arkansas is lacking adequate funds to provide for the education of its citizens and for other-essential services: that increased funds must be raised to adequately provide for those needs; that certain persons are assisting taxpayers in evading or defeating the payment or collection of lawfully imposed state taxes depriving the state of needed revenues and that this act is designed to provide the necessary revenues to the state sufficient to meet these needs. Therefore, an emergency is declared to exist and this act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effective on and after May 1, 1991."

Acts 1991, No. 688, § 10: Mar. 21, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that some taxpayers are not properly completing and timely filing tax returns; that these failures create an administrative burden upon the Department of Finance and Administration; and that this act is designed to impose a fifty dollar (\$50) penalty for failure to timely file returns, even if no tax is due, or if returns are not properly completed. Therefore, an emergency is hereby declared to exist and this act being necessary for the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 815, § 3; effective for all income years beginning on and after January 1, 1991.

Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

RESEARCH REFERENCES

ALR. What constitutes "reasonable cause" under state statutes imposing penalty on taxpayer for failure to file timely return unless such failure was due to reasonable cause. 29 A.L.R.4th 413.

Am. Jur. 72 Am. Jur. 2d, State Tax., § 856 et seq.

C.J.S. 85 C.J.S., Tax., § 1021 et seq.

26-18-201. Attempt to evade or defeat tax.

(a) Any taxpayer who willfully attempts to evade or defeat the payment of any tax, penalty, or interest due under any state tax law shall be guilty of a Class C felony.

(b) Any person who willfully assists a taxpayer in evading or defeating the payment of any tax, penalty, or interest due under any state tax law shall be guilty of a Class C felony.

History. Acts 1979, No. 401, § 36; A.S.A. 1947, § 84-4736; Acts 1987, No. 502, § 8; 1991, No. 3, § 9.

CASE NOTES**ANALYSIS**

Lesser Included Offenses.
Statute of Limitations.

Lesser Included Offenses.

Operation of a vehicle without a valid license plate in violation of § 27-14-304 is not a lesser included offense of willfully attempting to evade or defeat the payment of tax, in violation of subsection (a) of this section, and failure to pay tax, in violation of § 26-18-202; it is possible to commit the greater offenses without committing the offense of operating a vehicle without a license plate, and the lesser charge requires proof of an additional element not required under the greater offenses. *Owens v. State*, 354 Ark. 644, 128 S.W.3d 445 (2003).

Statute of Limitations.

Where defendant was charged with willfully attempting to evade or defeat the

payment of tax, in violation of subsection (a) of this section, and was convicted of failure to pay tax, in violation of § 26-18-202, the six-year statute of limitations under § 26-18-306(j) was applicable rather than the more general three-year limitations period under § 5-1-109(b)(2); section 26-18-306(j) specifically provides a six-year limitations period for prosecutions for any of the various criminal offenses arising under the provisions of any state tax law, and it is a well-settled principle of law that a general statute does not apply when a specific one governs the subject matter. *Owens v. State*, 354 Ark. 644, 128 S.W.3d 445 (2003).

Cited: *McCuen v. State*, 328 Ark. 46, 941 S.W.2d 397 (1997); *Davis v. State*, 94 Ark. App. 240, 228 S.W.3d 529 (2006).

26-18-202. Failure to pay or file return.

Any person required under any state tax law to pay over any tax or file any return who willfully fails to pay over the tax or file a return shall be guilty of a Class D felony.

History. Acts 1979, No. 401, § 40; A.S.A. 1947, § 84-4740; Acts 1987, No. 502, § 12.

CASE NOTES

ANALYSIS

Applicability.
Lesser Included Offenses.
Statute of Limitations.

Applicability.

Defendant's conduct in failing to pay use taxes on a motor home fell within the provisions of this section; defendant was not accused of having violated a provision of the vehicle registration laws, and the taxes required under § 26-53-126 are not exempt from the tax evasion laws. *Owens v. State*, 354 Ark. 644, 128 S.W.3d 445 (2003).

Lesser Included Offenses.

Operation of a vehicle without a valid license plate in violation of § 27-14-304 is not a lesser included offense of willfully attempting to evade or defeat the payment of tax, in violation of § 26-18-201(a), and failure to pay tax, in violation of this section; it is possible to commit the greater offenses without committing the

offense of operating a vehicle without a license plate, and the lesser charge requires proof of an additional element not required under the greater offenses. *Owens v. State*, 354 Ark. 644, 128 S.W.3d 445 (2003).

Statute of Limitations.

Where defendant was charged with willfully attempting to evade or defeat the payment of tax, in violation of § 26-18-201(a), and was convicted of failure to pay tax, in violation of this section, the six-year statute of limitations under § 26-18-306(j) was applicable rather than the more general three-year limitations period under § 5-1-109(b)(2); section 26-18-306(j) specifically provides a six-year limitations period for prosecutions for any of the various criminal offenses arising under the provisions of any state tax law, and it is a well-settled principle of law that a general statute does not apply when a specific one governs the subject matter. *Owens v. State*, 354 Ark. 644, 128 S.W.3d 445 (2003).

26-18-203. False or fraudulent reports, etc.

Any taxpayer required to make, render, sign, or verify any report, return, statement, claim, application, or other instrument required by this subchapter or by any state tax law who, with intent to defeat or evade the assessment or levy of the tax or to obtain any permit or license, makes a false or fraudulent return, statement, report, claim, invoice, application, or other instrument, or any tax return preparer or other person who aids or abets another in filing a false or fraudulent report or statement, is guilty of a Class D felony.

History. Acts 1979, No. 401, § 37; A.S.A. 1947, § 84-4737; Acts 1987, No. 502, § 9.

CASE NOTES

ANALYSIS

Errors.
Fraud.

Errors.

The Arkansas tax laws provided ample opportunity for a taxpayer to establish the error of any tax assessment. *Stuart v.*

Department of Fin. & Admin., 598 F.2d 1115 (8th Cir. 1979) (decision under prior law).

Fraud.

A private common law action for fraud does not exist to collect taxes. *Highland Sch. Dist. v. Travenol Labs., Inc.*, 291 Ark. 563, 726 S.W.2d 670 (1987).

26-18-204. False answers to questions or affidavits.

Any taxpayer or other person who knowingly makes a false answer to any question which may be asked him or her by the director concerning the business, property, assets, or effects of the taxpayer or person, or the valuation thereof, or the income or profits therefrom, or who makes or presents any false affidavit concerning any list, schedule, statement, report, or return, or for any other purpose, filed with the director or required to be filed by any state tax law, shall be guilty of a Class D felony.

History. Acts 1979, No. 401, § 39; A.S.A. 1947, § 84-4739; Acts 1987, No. 502, § 11.

26-18-205. Failure to obey summons.

Any person who, being summoned to appear to testify or to produce and permit the examination of any books, records, or papers, neglects to appear or to produce the papers shall be guilty of a Class D felony.

History. Acts 1979, No. 401, § 38; A.S.A. 1947, § 84-4738; Acts 1987, No. 502, § 10.

26-18-206. Conduct of business without license.

Any person required to obtain a license or permit by any state tax law which the director is required to enforce who shall, without obtaining the license or permit, conduct business or carry on activities required to be licensed is guilty of a Class A misdemeanor. Each day of conducting business or activities is a separate violation.

History. Acts 1979, No. 401, § 34; A.S.A. 1947, § 84-4734.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Tyler, Survey of Business Law, 3 U. Ark. Little Rock L.J. 149.

26-18-207. Continuance of business after forfeiture of bond.

Any person who, after the forfeiture by the director of any bond posted by him or her, continues or attempts to continue in the business or activities for which the bond was required to be posted, without having the bond reinstated or without making a new bond, is guilty of a Class D felony. Each day of continuing or conducting business or activities is a separate violation.

History. Acts 1979, No. 401, § 35; A.S.A. 1947, § 84-4735; Acts 1987, No. 502, § 7.

26-18-208. Additional penalties and tax.

In addition to the criminal penalties provided by this chapter, if a taxpayer shall fail to comply with certain provisions of this chapter, then the following penalties and additions to tax shall be applicable:

(1) In the case of a taxpayer's failure to file any return required by any state tax law on or before the date prescribed determined with regard to any extension of time for filing the return, unless it is shown that the failure is due to reasonable cause and not to willful neglect, there shall be added to the amount required to be shown as tax on the return five percent (5%) of the amount of the tax if the failure is not more than one (1) month, with an additional five percent (5%) for each additional month or fraction of a month during which the failure continues, not to exceed thirty-five percent (35%) in the aggregate;

(2)(A) In case of a failure to pay the amount shown as tax on any return required to be filed under any state tax law, except an individual income tax return, on or before the date prescribed for payment of the tax, unless it is shown that the failure to pay is due to reasonable cause and not to willful neglect, there shall be added to the amount shown as tax on the return five percent (5%) of the amount of the tax if the failure is for not more than one (1) month, with an additional five percent (5%) for each additional month or fraction of a month during which the failure continues, not to exceed thirty-five percent (35%) in the aggregate.

(B) In case of failure to pay the amount shown as tax on any individual income tax return required to be filed, on or before the date prescribed for payment of the tax, unless it is shown that the failure to pay is due to reasonable cause and not to willful neglect, there shall be added to the amount shown as tax on the return one percent (1%) of the amount of the tax if the failure is for not more than one (1) month, with an additional one percent (1%) for each additional month or fraction of a month during which the failure continues, not to exceed thirty-five percent (35%) in the aggregate;

(3)(A)(i) If any penalty is assessed under subdivision (1) of this section, then no penalty shall be assessed under subdivision (2)(A) of this section.

(ii) If any penalty is assessed under subdivision (2)(A) of this section, then no penalty shall be assessed under subdivision (1) of this section;

(B) With respect to any individual income tax return, the amount of the addition under subdivision (1) of this section shall be increased by the amount of the addition under subdivision (2)(B) of this section for any month or fraction of a month to which an addition to tax applies under both subdivision (1) and (2)(B) of this section, not to exceed thirty-five percent (35%) in the aggregate;

(4)(A) If any part of a deficiency in taxes is determined to be due to negligence or intentional disregard of rules and regulations promul-

gated under the authority of this subchapter or any state tax law, then the director shall add a penalty of ten percent (10%) of the total amount of the deficiency in addition to any interest provided by law.

(B) However, if any penalty is assessed under subdivisions (1)-(3) of this section, then no penalty shall be assessed under subdivision (4)(A) of this section;

(5)(A) If any part of any deficiency of any state tax required to be shown on a return is determined to be due to fraud, there shall be added to the tax an amount equal to fifty percent (50%) of the deficiency in addition to any interest provided by law.

(B) If any penalty is assessed under subdivision (5)(A) of this section, then no penalty shall be assessed under subdivisions (1)-(4) of this section;

(6)(A)(i) If a taxpayer fails to make a declaration of estimated tax and pay on any quarterly due date the equivalent to at least ninety percent (90%) of the amount actually due, there shall be added a penalty of ten percent (10%) per annum to the amount of the underestimate.

(ii) The ten percent (10%) per annum penalty shall be applied on a quarterly basis.

(iii) A taxpayer who has an uneven income may compute the ten percent (10%) penalty on an annualized basis.

(B) The penalty provided in this subdivision (6) for failure to make correct payments of estimated income tax shall not be applied to the following exceptions:

(i) No penalty shall be imposed for a tax year if the tax shown on the return for such tax year is one thousand dollars (\$1,000) or less;

(ii) A taxpayer whose income from farming for the income year can reasonably be expected to amount to at least two-thirds ($\frac{2}{3}$) of the total gross income from all sources for the income year, may file such declaration and pay the estimated tax on or before the fifteenth day of the second month after the close of the income year, or in lieu of filing any declaration, may file an income tax return and pay the tax on or before the fifteenth day of the third month after the close of the income year;

(iii) The penalty provided in this subdivision (6) shall not be applicable when the original amount of estimated tax is the same amount shown to be due by the return of the taxpayer for the preceding income year when such return showing a liability for tax was filed by the taxpayer for the preceding income year of twelve (12) months;

(iv) In lieu of filing the fourth quarter installment, the taxpayer may file an income tax return and pay the tax on or before January 31, or on the last day of the first month after the close of the income year;

(v) No penalty shall be imposed for a tax year if:

(a) The preceding tax year was a tax year of twelve (12) months;

(b) The taxpayer did not have a tax liability for the preceding tax year; and

(c) The taxpayer was a resident of Arkansas throughout the preceding tax year;

(vi) No penalty shall be imposed with respect to any underpayment to the extent that the director determines that by reasons of casualty, disaster, or other unusual circumstances the imposition of such penalty would be against equity and good conscience; and

(vii) No penalty shall be imposed with respect to any underestimate or underpayment if the director determines that:

(a) In the year for which such estimated payment was required to be made or in the tax year preceding such tax year, the taxpayer:

(1) Retired after having attained sixty-two (62) years of age; or

(2) Became disabled; and

(b) Such underpayment was due to reasonable cause and not to willful neglect;

(7) In addition to any other penalty provided by law, there shall be assessed a penalty of five hundred dollars (\$500) if any taxpayer:

(A) Files what purports to be a return, but the purported return does not contain information on which the substantial correctness of the return may be judged, and the conduct is due to a position which is frivolous or an effort to delay or impede the administration of any state tax law;

(B) Files what purports to be a return, but the purported return contains information that on its face indicates that the return is substantially incorrect, and the conduct is due to a position which is frivolous or an effort to delay or impede the administration of any state tax law; or

(C) Asserts or relies upon any grounds in defense or avoidance of a proposed assessment of tax, penalty, or interest, and the conduct is due to a position which is frivolous or an effort to delay or impede the administration of any state tax law;

(8) All penalties or additions to tax and interest imposed by any state tax law are assessable and collectible by the director as a part of the tax due and owing; and

(9)(A) If any person makes payment to the director for any taxes, licenses, or fees imposed by any laws of this state by means of a check, draft, order, electronic funds transfer, or any other form of presentment involving the transmission of account information for the payment of money upon any bank, person, firm, or corporation having insufficient funds in or on deposit with the bank, person, firm, or corporation for the payment of the check, draft, order, electronic funds transfer, or any other form of presentment, the director may impose a penalty of ten percent (10%) of the face amount of the check, draft, order, electronic funds transfer, or any other form of presentment or twenty dollars (\$20.00), whichever is greater, against the maker or drawer of the check, draft, order, electronic funds transfer, or any other form of presentment.

(B) This subdivision (9) shall not apply if the person establishes to the satisfaction of the director that he or she tendered the check,

draft, order, electronic funds transfer, or any other form of presentment in good faith and with reasonable cause to believe it would be duly paid.

History. Acts 1979, No. 401, § 41; 1981, No. 914, § 6; A.S.A. 1947, § 84-4741; Acts 1987, No. 502, § 13; 1989, No. 826, § 14; 1991, No. 815, §§ 1, 2; 1997, No. 702, § 1; 1999, No. 1126, § 7; 2003, No. 1084, § 1.

Publisher's Notes. Acts 1989, No. 826, § 1, provided that this act shall be known and may be cited as the "Arkansas Income Tax Technical Revenue Act of 1989."

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislative Funds Transfer Payments, 26 U. Ark. Survey, Taxation, 4 U. Ark. Little Rock L.J. 609.

Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Electronic

Little Rock L. Rev. 497.

CASE NOTES

ANALYSIS

Factual Determinations.
Penalties.

Factual Determinations.

Although subdivision (3) (now subdivision (4)) may require a factual determination of negligence or intentional disregard before imposing a penalty of 10%, prior to the 1981 amendment, this subdivision imposed an automatic penalty. *Little Rock Mun. Water Works v. Ragland*, 279 Ark. 324, 651 S.W.2d 78 (1983).

Penalties.

Where transactions are not subject to assessment, no penalty should be im-

posed. *Ragland v. Dumas*, 292 Ark. 515, 732 S.W.2d 119 (1987).

Failure to file estimated tax return resulted in deficiency upon which penalty could be assessed even though basic tax due was paid upon filing of annual return. *Dixie Furn. Co. v. Ragland*, 300 Ark. 69, 776 S.W.2d 357 (1989).

Cited: *Kansas City S. Ry. v. Pledger*, 301 Ark. 564, 785 S.W.2d 462 (1990); *Martin v. Couey Chrysler Plymouth, Inc.*, 308 Ark. 325, 824 S.W.2d 832 (1992).

26-18-209. Evading or defeating tax — Accomplice liability.

Any person who assists a taxpayer in evading or defeating the payment of any state tax shall be liable for a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over to the director.

History. Acts 1991, No. 3, § 10.

26-18-210. Prosecutions — Where permitted.

Prosecution of any criminal offense provided for in this subchapter may be in the county wherein the taxpayer resides, has an established place of business, or in Pulaski County.

History. Acts 1991, No. 3, § 10.

26-18-211. Failure to correct noncompliance after notification.

If a taxpayer has been previously advised that he or she has failed to comply with the provisions of the Arkansas Code or the rules and regulations as promulgated by the Director of the Department of Finance and Administration by his or her failure to include all of the information required to be shown on the return or the inclusion of incorrect information and he or she continues to disregard those provisions, there shall be assessed a penalty of fifty dollars (\$50.00) per return, unless the failure is due to reasonable cause and not due to willful neglect.

History. Acts 1991, No. 688, § 5.

26-18-212. Failure to file a return after notification.

If a taxpayer has previously been advised that the taxpayer has not complied with the provisions of §§ 26-51-804(a), 26-51-908(g)(2), 26-52-501(a), 26-53-125(a)(1), or 26-55-229(b), because the taxpayer has not filed a return or notified the Director of the Department of Finance and Administration that the taxpayer is no longer required to file a return, even though no tax is due, and the taxpayer continues to disregard those provisions, there shall be assessed a penalty of fifty dollars (\$50.00) per return, unless the failure is due to reasonable cause and not due to willful neglect.

History. Acts 1991, No. 688, § 6; 1993, No. 621, § 1; 2011, No. 788, § 1.

Amendments. The 2011 amendment substituted “the taxpayer” for “he” in four places; and deleted “or 26-56-106(a)” following “26-55-229(b).”

SUBCHAPTER 3 — ADMINISTRATION GENERALLY

SECTION.	SECTION.
26-18-301. Duties of director.	26-18-308. Disposition of revenues.
26-18-302. Preservation of records and copies.	26-18-309. Defense of director in civil suits.
26-18-303. Records confidential and privileged — Exceptions.	26-18-310. Director’s authority.
26-18-304. Bonds.	26-18-311. Electronic tax administration policy.
26-18-305. Examinations and investigations.	26-18-312. Signatures on electronic forms.
26-18-306. Time limitations for assessments, collection, refunds, and prosecution.	26-18-313. Standard of proof for exemptions, deductions, and credits.
26-18-307. Notice requirements.	

Effective Dates. Acts 1981, No. 914, § 9: Dec. 31, 1980. Emergency clause provided: “It is hereby found and determined by the General Assembly that certain provisions of the State’s income tax laws that have counterparts in the Federal income tax laws do not coincide with recent amendments to the Federal income tax laws; that clarification needs to be made to provisions of the Arkansas Tax Procedure Act (Act 401 of 1979) with regard to the statute of limitations on assessments,

the judicial review of contested assessments and the automatic assertion of the 10% negligence penalty (as apparently approved by the Supreme Court in its decision in *Great Lakes Chemical Co. v. Wooten*, 266 Ark. 511, 514 (1979) which decision was rendered after the adoption by the General Assembly of Act 401 of 1979, but before the effective date of that Act); and that this Act is immediately necessary to make the Arkansas income tax law conform with the Federal income tax law, to clarify any possible question as to the applicability of the Statute of Limitations on assessment and judicial review of contested assessments, and to stop the automatic assessment of the 10% negligence penalty on any deficiency in tax determined by the Commissioner. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect for all periods beginning after December 31, 1980."

Acts 1983, No. 673, § 4: Mar. 22, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Student Loan Authority and the Student Loan Guarantee Foundation of Arkansas are charged with collecting student loan indebtedness and that in some cases those agencies are unable to locate persons who fail to make payment of their student loans; that all reasonable assistance should be given those agencies in locating persons who fail to repay student loans as agreed; that this Act is designed to aid those agencies in locating such persons by authorizing the Commissioner of Revenues to disclose to those agencies information concerning the last known address and/or last known employer of such persons. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 694, § 4: Mar. 23, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the law regarding confidentiality of tax information needs to be modified in order to provide an exchange of information between the Revenue Commissioner and other State government agencies to ensure that vendors receiving

payments have been issued sales tax permits, and that this Act is immediately necessary to provide such exchange of information. Therefore an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 382, § 34: Mar. 24, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the federal government has recently made major changes in the federal income tax law; that for simplicity of administration and equity various provisions of the federal law should be adopted for Arkansas Income Tax purposes; and that for the effective administration of this Act, the Act should become effective immediately. Therefore an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 826, § 36, provided that the provisions of that act shall be in full force and effect for all income years beginning on or after January 1, 1989.

Acts 1991, No. 678, § 2: Jan. 1, 1992.

Acts 1991, No. 685, § 11, provided: "The provisions of this act shall be in full force and effect for all income years beginning on and after January 1, 1991."

Acts 1993, No. 785, § 24: Mar. 30, 1993. Emergency clause provided: "It is hereby found and determined that certain changes are necessary to the Arkansas income tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1018, § 6: Apr. 12, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Public Institutions of Higher Education are charged with collecting student indebtedness and that in some cases those institutions are

unable to locate persons who fail to make payment of their student indebtedness; that all reasonable assistance should be given those agencies in locating persons who fail to pay or repay student tuition, fees, loans, and other student indebtedness; that this act is designed to aid those institutions in locating such persons by authorizing the Commissioner of Revenues to disclose to those agencies information concerning the last known address and/or last known employer of such persons. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 951, § 34: Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time.

Acts 1997, No. 951, § 38: March 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that current state tax laws are unclear or confusing, creating difficulty for taxpayers seeking to comply with these tax laws; that the changes made by Sections 25 through 31 of this bill are necessary to provide adequate direction to those taxpayers and to maintain the efficient administration of the Arkansas tax laws; and that the provisions of Sections 25 through 31 of this Act are necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and the provisions of Sections 25 through 31 of this Act being necessary for the preservation of the public peace, health, and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, Sections 25 through 31 shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, Sections 25 through 31 shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Acts 2001, No. 1368, § 6: Apr. 5, 2001. Emergency clause provided: "It is found and determined by the General Assembly that lack of compliance with state and local tax laws reduces the available revenues to fund the public schools and other essential state-services, and that this act is designed and intended to ensure that adequate funding is available for those programs and to ensure full compliance with the tax laws of this state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 214, § 2: Feb. 26, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that revenue available for the support of necessary state services has declined during the last twelve months as a result of the nationwide economic slowdown; that without reducing the administrative expenses of the Department of Finance and Administration, some state services will be reduced or eliminated; and that this bill will reduce administrative expenses associated with certified mail in order to avoid the reduction in necessary services. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2003, No. 860, § 16: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the flow of

development capital funds into and within the state has been and continues to be, insufficient to support the growth of businesses and infrastructure development; that as a result of the lack of available capital sources, the state has suffered economic losses because of the inability to compete with other states in providing capital resources for business and infrastructure development; that this legislation will stimulate the flow of private capital and long-term loan funds that are vital to the sound financing of businesses and will encourage growth, expansion, and modernization through the reinstatement of tax credits; that unless an adequate program to encourage private capital investment is undertaken, the state will suffer further irreparable loss as a result of the continued inability to support business and infrastructure development, and from the lost opportunities for economic expansion. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be effective on July 1, 2003.”

Acts 2007, No. 865, § 3: Apr. 3, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act concerns the disclosure of certain information in corporate franchise tax reports; that the release of this information to the public at large is harmful to the report’s filer; and that this act should become effective as soon as possible to prevent this harm. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2009, No. 238, § 2: Feb. 25, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that federal law currently extends the statute of limitations to request a federal income tax refund to allow an individual who receives military retirement benefits that are subject to federal income tax and is later

determined to be eligible for service connected disability benefits that are not subject to federal income tax to claim a refund of the tax paid on the benefits that are retroactively determined to be excluded from income. There is no comparable extension of the statute of limitations in state law, and a veteran is unable to receive a state income tax refund on the same benefits for which the veteran is able to receive a federal income tax refund. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2009, No. 360, § 4: July 1, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that many businesses required to report and remit Arkansas gross receipts taxes as well as employee withholding taxes often discontinue payment of withholding taxes when faced with the possible closure of the business for failure to report and remit the gross receipts taxes; that business faced with the potential closure for failure to remit gross receipts taxes will often avoid closure by paying the delinquent gross receipts or compensating use tax with the withholding tax collected from employees of the business; and that this act is necessary to stop the loss of the withholding tax. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2009.”

Acts 2009, No. 373, § 2, provided: “Section 1 of this act is effective for tax years beginning on or after January 1, 2009.”

Acts 2009, No. 755, § 3: July 31, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that many manufacturers and other businesses have found that it is substantially more difficult to prove they are entitled to a tax exemption, deduction, or credit in Arkansas than in most other states based on the court in-

terpretation that the taxpayer must present facts that establish their right to a tax exemption, deduction, or credit "beyond a reasonable doubt" and "to doubt is to deny" exemptions; that the standard of proof for the taxpayer to prove an exemption, deduction, or credit should be changed to clear and convincing evidence, and that in trials de novo or appeals within the judicial system, no presumption of correctness should attach to positions of taxing authorities at the adminis-

trative level. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Stafford, Separation of Powers and Arkansas Administrative Agencies: Distinguishing Ju-

dicial Power and Legislative Power, 7 U. Ark. Little Rock L.J. 279.

26-18-301. Duties of director.

(a) The director shall:

(1) Administer and enforce the provisions of every state tax law and when necessary shall promulgate and enforce the rules and regulations;

(2) Audit and properly determine and compute the state tax payable by any taxpayer subject to taxation under any state tax law;

(3) Assess and collect any state tax; and

(4) Administer and enforce all state tax laws.

(b) The director shall make available at cost to the general public all rules and regulations promulgated by the director.

(c) The director shall provide forms, schedules, and returns for all state tax laws.

(d) The director may accept electronic or digital signatures as binding, valid signatures on all reports, forms, or schedules required to be filed by state law.

History. Acts 1979, No. 401, § 4; A.S.A. 1947, § 84-4704; Acts 1999, No. 1132, § 2.

26-18-302. Preservation of records and copies.

(a)(1) The director shall keep and permanently preserve the original of all official rules, regulations, decisions, and orders and the effective date thereof.

(2)(A) A copy of a rule, regulation, decision, or order made by the director in the administration of any state tax law may be authenticated under his or her official seal.

(B) An authenticated copy is admissible in any court in this state under § 16-46-101.

(C) The director may charge a reasonable fee, not to exceed five dollars (\$5.00), to cover the cost of authentication.

(D) Under no circumstances shall the director furnish copies of records which may by law be prohibited from being made public.

(b)(1) The director may microfilm any returns, reports, records, or documents received or issued by him or her in the administration of any state tax law.

(2) The microfilm records shall be properly indexed for easy retrieval, and one (1) copy shall be placed in a fireproof vault.

(3) These records are admissible as evidence in any court in this state under § 16-46-101 and shall have the same weight and force as the original thereof.

(c) If the director determines that a method for the reproduction of records is more practicable than the use of microfilm, he or she may use that method.

History. Acts 1979, No. 401, § 5; A.S.A. 1947, § 84-4705.

26-18-303. Records confidential and privileged — Exceptions.

(a)(1) The Director of the Department of Finance and Administration is the official custodian of all records and files required by any state tax law to be filed with the Director of the Department of Finance and Administration and is required to take all steps necessary to maintain their confidentiality.

(2)(A)(i) Except as otherwise provided by this chapter, the records and files of the Director of the Department of Finance and Administration concerning the administration of any state tax law are confidential and privileged.

(ii) These records and files and any information obtained from these records or files or from any examination or inspection of the premises or property of any taxpayer shall not be divulged or disclosed by the Director of the Department of Finance and Administration or any other person who may have obtained these records and files.

(B) It is the specific intent of this chapter that all tax returns, audit reports, and information pertaining to any tax returns, whether filed by individuals, corporations, partnerships, or fiduciaries, shall not be subject to the provisions of the Freedom of Information Act of 1967, § 25-19-101 et seq.

(b) The provisions against disclosures shall not apply to the following:

(1) Publication of statistics by the Director of the Department of Finance and Administration classified to prevent the identification of a particular taxpayer;

(2) Use of the information in records filed under any state tax law by the Director of the Department of Finance and Administration when conducting any audit or investigation of any taxpayer in regard to any state tax;

(3)(A) Disclosure of information to the Attorney General of this state, any prosecuting attorney, or any other individual who is empowered by law to prosecute criminal and civil violations of any state tax law when the Director of the Department of Finance and Administration initiates the investigation.

(B) If the prosecution is initiated by the Attorney General or a prosecuting attorney, the Director of the Department of Finance and Administration shall not disclose any information unless required by subpoena issued by a circuit court.

(C) Information may be introduced as evidence by the Attorney General, a prosecuting attorney, or other individual so empowered when the individual is prosecuting any civil or criminal violation of state tax law;

(4) Disclosure compelled by any Arkansas circuit court, the Supreme Court, the Court of Appeals, or by any federal court of information involved in any case or controversy before that court;

(5) Disclosure by the taxpayer or the taxpayer's authorized agent or by the Director of the Department of Finance and Administration, at the taxpayer's request, of any information which the Director of the Department of Finance and Administration has concerning that taxpayer;

(6) Disclosure by the Director of the Department of Finance and Administration, at the Director of the Department of Finance and Administration's discretion, of information from the records of any state tax law to comparable officials of any other state or the United States who are charged with the administration of a similar tax;

(7) Disclosure of motor vehicle titling and registration information, all licenses and permits issued to owners and operators of coin-operated amusement machines pursuant to §§ 26-57-402, 26-57-408 — 26-57-421, and 26-77-303, and tax records, files, and other information relating to sales of aviation fuel at airports and other aviation fuel outlets;

(8) Disclosure of information other than income tax information at an administrative hearing held regarding the issuance, cancellation, revocation, or suspension of licenses or permits issued by the Director of the Department of Finance and Administration or any other state agency or department;

(9)(A) Disclosure to the Arkansas Student Loan Authority, the Department of Higher Education, the Student Loan Guarantee Foundation of Arkansas, or any Arkansas public institution of higher education of the last known address or whereabouts or the last known employer of any person from whom these agencies are charged with collecting a student loan or other student indebtedness.

(B) In providing such information, the Director of the Department of Finance and Administration shall not allow the Arkansas Student Loan Authority, the Student Loan Guarantee Foundation of Arkansas, the Department of Higher Education, or any Arkansas public institution of higher education to examine the tax return;

(10)(A) In order to ensure proper payment to vendors by all agencies of state government or by county governments or city governments, information about the receipt or nonreceipt of sales tax permits by vendors must be made available by the Director of the Department of Finance and Administration upon request by these agencies of state government or by county governments or city governments.

(B) Therefore, notwithstanding any provision of this chapter or any other law to the contrary, in instances when state agencies, boards, commissions, and other branches of state government or county governments or city governments identify to the Director of the Department of Finance and Administration the identity of vendors receiving payments and ask the Director of the Department of Finance and Administration whether these vendors have been issued sales tax permits, the Director of the Department of Finance and Administration shall answer these inquiries;

(11) Disclosure of the name of any taxpayer and the amount of any tax credit, tax rebate, tax discount, or commission for the collection of a tax received by such taxpayer from the following tax incentive provisions:

- (A) Discount for prompt payment, § 26-52-503;
- (B) Economic Investment Tax Credit Act, § 26-52-701 et seq.;
- (C) Steel Mill Tax Incentives, §§ 26-52-901 — 26-52-903;
- (D) Motor fuel shrinkage allowance, § 26-55-230(a)(1)(F);
- (E) Commission for sale of stamps for cigarettes and the collection of cigarette taxes, § 26-57-236(f);
- (F) Motion Picture Incentive Act of 1983, § 26-4-201 et seq.;
- (G) Credit on severance tax of oil producer, § 26-58-204;
- (H) Credit on severance tax of gas producer, § 26-58-205;
- (I) Refund of motor fuel tax by municipal buses, § 26-55-401 et seq.;
- (J) Refund of distillate special fuel tax to interstate users, §§ 26-56-214 and 26-56-215;
- (K) Credit against severance tax for the discovery of a commercial oil pool, § 15-72-706;
- (L) Native wines — Subsidies, § 3-5-1001 et seq.;
- (M) Native wines — Incentive grants, § 3-5-901 et seq.;
- (N) Native wines export incentives, § 3-5-607 [repealed];
- (O) Consolidated Incentive Act of 2003, § 15-4-2701 et seq.; and
- (P)(i) Any other tax incentive program enacted after January 1, 1991, that provides a tax credit, tax rebate, tax discount, or commission for the collection of a tax, with the exception of any benefits under the income tax laws of this state.

(ii) However, information that is subject to disclosure under the provisions of this subdivision (b)(11) shall not be disclosed if such information would give an advantage to competitors or bidders or if such information is exempt from disclosure under any other provision of law that exempts specified information from disclosure under any such law;

(12) Disclosure of the lists required by:

(A) Section 3-2-205(e)(4), reporting to the Alcoholic Beverage Control Division of the Department of Finance and Administration and the Alcoholic Beverage Control Board those taxpayers who hold a permit to sell alcoholic beverages and who are delinquent in state taxes; and

(B) Section 26-57-257(q)(2), reporting to the Arkansas Tobacco Control Board those taxpayers who hold a permit to sell tobacco products and cigarettes and who are delinquent in state taxes;

(13) Disclosure to the Tax Division of the Arkansas Public Service Commission of information contained in motor fuel tax records necessary to assess motor carrier companies for ad valorem taxation;

(14)(A) Disclosure of the following information from corporate franchise tax reports:

(i) The name and address of the corporation;

(ii) The name of the corporation's president, vice president, secretary, treasurer, and controller;

(iii) The total authorized capital stock with par value;

(iv) The total issued and outstanding capital stock with par value; and

(v) The state of incorporation.

(B) In the case of a franchise tax report filed by an organization formed under the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., the confidentiality provision of subsection (a) of this section shall apply to the names of members of the organization, except those designated in the organization's franchise tax report as a manager, president, vice president, secretary, treasurer, or controller of the organization, unless the organization has no registered agent for service of process, in which case the confidentiality provisions of subsection (a) of this section shall not apply;

(15) Disclosure compelled by a subpoena issued by a state or federal prosecutor or grand jury or other state or federal entity with subpoena power;

(16)(A) Disclosure to county assessors of information that may affect personal property tax assessments, including information obtained during the course of audits or investigations concerning motor vehicles, boats, trailers, airplanes, or other items of personal property that may be subject to assessment in that county.

(B) This information may be released only following completion of an audit or investigation by the Director of the Department of Finance and Administration and following a determination by the Director of the Department of Finance and Administration that there is a strong possibility the taxpayer has failed to properly assess the taxpayer's personal property in the county.

(C) In providing this information, the Director of the Department of Finance and Administration shall not allow the county assessors to examine any tax returns or audit records;

(17) Disclosure to a capital development company organized under the Arkansas Capital Development Company Act, § 15-4-1001 et seq.,

of the name and tax identification number of and amount of any tax credit received by a taxpayer as a result of the purchase of an equity interest in a capital development company;

(18)(A) For the purpose of the timely and accurate collection of local sales and use tax and state income tax withholding for employees, disclosure of the name and address of a taxpayer that has failed three (3) times within any consecutive twenty-four-month period to either report or remit state or local gross receipts or compensating use tax or state income tax withholding for employees and has been served with a business closure order under § 26-18-1001 et seq.

(B) Disclosure shall be made by posting weekly on the website maintained by the Department of Finance and Administration the business name, business address, and city and county in which the business is located as it appears on the sales tax permit or the state income tax withholding for employees registration of each taxpayer identified in subdivision (b)(18)(A) of this section.

(C) The information posted on the website for a taxpayer shall remain on the website until that taxpayer is no longer subject to the business closure provisions of § 26-18-1001 et seq.;

(19)(A) Disclosure to the Arkansas Economic Development Commission of any information requested regarding a tax incentive program that provides a tax credit, tax rebate, tax discount, or other economic incentive that is jointly administered by the Arkansas Economic Development Commission and the Department of Finance and Administration.

(B) Any information received by the Arkansas Economic Development Commission under this section shall remain confidential and is not subject to disclosure except in accordance with this section;

(20) Disclosure to the office of a standing chapter 13 bankruptcy trustee, upon the request of the trustee, whether or not a taxpayer filed a state tax return for all taxable periods ending during the four-year period ending on the date of the filing of a petition for relief under Chapter 13 of Title 11 of the United States Code;

(21)(A) To perform audit and compliance duties, disclosure to the Department of Workforce Services of withholding tax information reported by companies doing business in Arkansas, including without limitation taxpayer names, taxpayer addresses, tax identification numbers, and tax withholding information.

(B) Information received by the Department of Workforce Services under this section shall remain confidential and is not subject to disclosure except in accordance with this section;

(22) Disclosure of information, including disclosure as required under § 26-55-232, regarding delinquent motor fuel excise tax levied by the Motor Fuel Tax Law, § 26-55-201 et seq. and by § 26-56-601 et seq., to a bonding company that provides the surety bond required by § 26-55-222 for the taxpayer that owes the delinquent tax;

(23) Disclosure of information regarding delinquent distillate special fuel tax levied by § 26-56-201 et seq. and by § 26-56-601 et seq. to a

bonding company that provides the surety bond required by § 26-56-204 for the taxpayer that owes the delinquent tax; and

(24) Disclosure of information regarding delinquent liquefied gas special fuel tax levied by § 26-56-301 et seq. and by § 26-56-601 et seq. to a bonding company that provides the surety bond required by § 26-56-303 for the taxpayer that owes the delinquent tax.

(c) The provisions of this section shall be strictly interpreted and shall not permit any other disclosure of tax information concerning a taxpayer, whether the taxpayer is an individual, a corporation, a partnership, or a fiduciary, that is contained in the records and files of the Director of the Department of Finance and Administration relating to income tax or any other state tax administered under this chapter.

(d)(1) Any person who knowingly discloses information in violation of a provision of this section shall be guilty of a Class A misdemeanor.

(2) An employee of the state who is convicted of violating a provision of this section shall be discharged from employment in addition to any fine or imprisonment.

(e) Any person who knowingly obtains or attempts to obtain any of the confidential and privileged records and files of the Director of the Department of Finance and Administration who is not so permitted by law is guilty of a Class A misdemeanor.

(f) The Director of the Department of Finance and Administration shall report all violations of this section to the appropriate prosecuting attorney in this state.

(g)(1) The Director of the Department of Finance and Administration shall promulgate such regulations as are necessary to establish a reasonable procedure for making requests for and release of information under subdivision (b)(11) of this section, for allowing a taxpayer reasonable notice in advance of the release of the requested information, for a period of time up to seven (7) days from the date a request for information is made to provide notice and make necessary determinations, and to provide the methods by which the Director of the Department of Finance and Administration shall determine if the information requested is subject to disclosure under Arkansas law.

(2) The provisions of this section shall solely govern the release of information under subdivision (b)(11) of this section and the release of information shall not be subject to the Freedom of Information Act of 1967, § 25-19-101 et seq.

(h)(1) Upon the request of a county government or a city government, the Director of the Department of Finance and Administration shall provide a list of vendors within the requesting county or city who hold permits issued pursuant to the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

(2) Requests made pursuant to this subsection must be made in writing by an official of the county government or city government prior to August 1 of the calendar year for which the list is requested.

(3) Lists provided pursuant to the provisions of this subsection will be made available following October 1 of the year requested and will be

compiled from the list of all valid sales tax permit holders within the requesting county or city as of September 1 of the year requested.

(4)(A) A reasonable fee based upon the number of permit holders within the requesting city or county may be charged for the permit search made and reported to the requesting county or city government.

(B) Fees collected under the provisions of this subsection shall be deposited into the State Central Services Fund to be treated as a refund of expenditures to reimburse the Department of Finance and Administration for the costs of providing the requested information.

(i)(1) The Director of the Department of Finance and Administration may disclose information from a return filed by a person, partnership, corporation, trust, or estate to any of the parties who signed the return:

(A) Who is the administrator, executor, or trustee of the estate filing the return;

(B) Who was a member of the partnership filing the return during any part of the period covered by the return;

(C) Who is a trustee or beneficiary of the trust filing the return;

(D) Who is an officer or bona fide shareholder of record owning one percent (1%) or more of the outstanding stock of the corporation filing the return;

(E) Who was a shareholder during any part of the period covered by the return filed by a Subchapter S corporation;

(F) Who was a member of the partnership during any part of the period covered by the partnership return; or

(G) Who is the attorney in fact duly authorized in writing by any of the persons described in subdivisions (i)(1)(A)-(F) of this section.

(2) The Director of the Department of Finance and Administration may also disclose all information concerning the collection activity related to a tax return to any party who signed the return.

(3) The Director of the Department of Finance and Administration shall promulgate such regulations as are necessary to establish a reasonable procedure for making requests for and for the release of information under this section.

(j)(1) The General Assembly finds that:

(A) The collection of cigarette and other tobacco products taxes and the enforcement of the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq., §§ 26-57-260 and 26-57-261, and §§ 26-57-1301 — 26-57-1307, effect the fiscal soundness of the state and the public health;

(B) The Attorney General and the Director of Arkansas Tobacco Control play an important role in the enforcement of the state's tobacco laws; and

(C) The sharing of documents and other information between the Director of the Department of Finance and Administration, the Attorney General, and the Director of Arkansas Tobacco Control will put the state in a better position to prevent tobacco diversion and prevent cigarettes from being sold to youth and an already addicted adult population.

(2) The Director of the Department of Finance and Administration may disclose documents and other information submitted by stamp deputies appointed under § 26-57-236 or those persons licensed or permitted under the terms of the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq., to the Attorney General or the Director of Arkansas Tobacco Control upon the request of the Attorney General or the Director of Arkansas Tobacco Control.

(3)(A) The documents and other information provided under this subsection shall not be disclosed by the Attorney General or the Director of Arkansas Tobacco Control to a person other than a person specifically authorized by the Attorney General or the Director of Arkansas Tobacco Control to receive the documents or other information.

(B) However, the Attorney General and the Director of Arkansas Tobacco Control may share the documents and other information provided under this subsection with the taxing authorities or law enforcement agencies of Arkansas or another state or with any other entity permitted by the Attorney General to aggregate the documents and other information, if the parties agree to the confidentiality requirements under this subsection.

(4)(A) The Attorney General and the Director of Arkansas Tobacco Control may use the documents and other information provided under this subsection by the Director of the Department of Finance and Administration in proceedings before any court.

(B)(i) However, the documents and other information shall not be presented in court except with the approval of the court in which the action is pending and after adequate notice to the person who initially furnished the documents or other information to the Director of the Department of Finance and Administration.

(ii) When confidential information is presented with court approval, the documents and other information and the related evidence shall be held in camera and shall be part of the court record or trial transcript only if under seal.

History. Acts 1979, No. 401, § 6; 1981, No. 854, § 1; 1983, No. 673, § 2; 1983, No. 694, §§ 1, 2; 1985, No. 694, § 1; A.S.A. 1947, §§ 84-4706 — 84-4706.2; Acts 1987, No. 382, §§ 29, 30; 1991, No. 400, §§ 1, 2; 1993, No. 403, § 21; 1993, No. 1018, § 2; 1993, No. 1159, § 1; 1995, No. 1276, §§ 1, 2, 3; 1997, No. 1039, § 1; 1999, No. 1126, § 13; 1999, No. 1277, § 9; 1999, No. 1598, § 1; 2001, No. 565, § 1; 2001, No. 1368, § 1; 2003, No. 860, § 10; 2005, No. 1294, § 1; 2007, No. 437, § 1; 2007, No. 827, § 196; 2007, No. 865, § 1; 2009, No. 272, § 1; 2009, No. 360, § 2; 2009, No. 504, § 2; 2009, No. 655, § 1; 2011, No. 788, § 2; 2011, No. 836, § 1; 2011, No. 983, § 1.

A.C.R.C. Notes. Section 3-5-607, con-

cerning tax incentives for export of local wines, referred to in subdivision (a)(11)(N) of this section, was repealed by Acts 2007, No. 668, § 5.

Publisher's Notes. Acts 1987, No. 382, § 1, provided that this act shall be known and may be cited as the "Income Tax Act of 1987."

Acts 1987, No. 382, § 2, provided that the purpose of this act is to make technical amendments to the Income Tax Act of 1929, Acts 1929, No. 118, as amended, and to the Arkansas Tax Procedure Act, Acts 1979, No. 401, as amended, to make the Arkansas income tax and tax procedure statutes conform to several recent amendments to their counterparts in the federal

income statutes, to eliminate procedural problems that have arisen since the enactment of these acts, and for other purposes.

Acts 1987, No. 382, § 32(e), provided that all other laws and parts of laws in conflict with this act are repealed for income years beginning on and after January 1, 1987.

Acts 1987, No. 382, § 33, provided that, except as provided in § 26-18-303(a)(2)(B) and (c), regarding confidentiality of tax returns and other tax information, which shall apply retroactively to any pending suit, action, or prosecution, administrative or judicial, for which no final judgment has been rendered by a court of competent jurisdiction and all future suits, actions, and prosecutions, the provisions of this act shall apply to income years beginning on and after January 1, 1987.

The Arkansas Enterprise Zone Act of 1989, §§ 15-4-801 — 15-4-814, referred to in this section, expired June 30, 1995, pursuant to former § 15-4-814. Sections 26-55-301 — 26-55-321, referred to in this section, were repealed by Acts 1995, No. 777, § 9.

Amendments. The 2009 amendment by No. 272 inserted (b)(20) and made related and minor stylistic changes.

The 2009 amendment by No. 360 inserted “and state income tax withholding for employees” or similar language in two places in (18)(A), inserted “or the state income tax withholding for employees registration” in (18)(B), and made a minor stylistic change.

The 2009 amendment by No. 504 inserted (b)(20) (now (b)(21)) and made related and minor stylistic changes.

The 2009 amendment by No. 655 substituted “§ 26-57-236(f)” for “§ 26-57-236(g), as amended by Acts 1997, No. 434” in (b)(11)(E).

The 2011 amendment by No. 788 added (b)(22) through (24).

The 2011 amendment by No. 836 added (j).

The 2011 amendment by No. 983 deleted “as amended by Acts 1997, No. 1337” at the end of (b)(11)(E).

Cross References. Confidentiality exemption, § 26-36-319.

Penalties for Class A misdemeanors, §§ 5-4-201, 5-4-401.

RESEARCH REFERENCES

Ark. L. Rev. Watkins, Access to Public Records Under the Arkansas Freedom of Information Act, 37 Ark. L. Rev. 741.

CASE NOTES

ANALYSIS

Construction.

Implied Repeal.

Inspection and Copying.

Motor Fuel Tax Records.

Tobacco Stamp Sales.

Construction.

The language in subdivision (b)(11)(P) of this section is not ambiguous and thus must be given its plain and ordinary meaning as written. *Leathers v. W.S. Compton Co.*, 316 Ark. 10, 870 S.W.2d 710 (1994).

The phrase “advantage to competitors” in subdivision (b)(11)(P) of this section means “any advantage” as it is simply not otherwise limited. *Leathers v. W.S. Compton Co.*, 316 Ark. 10, 870 S.W.2d 710 (1994).

The commissioner has interpreted subdivision (b)(11)(P) of this section in Revenue Regulation 1991-7, which is entitled “Disclosable Tax Information”; it states that the information will not be released unless the taxpayer shows release of the information would result in substantial harm to the taxpayer’s competitive position. *Leathers v. W.S. Compton Co.*, 316 Ark. 10, 870 S.W.2d 710 (1994).

Legal opinions rendered in tax cases under 006-05-009 Ark. Code R. § GR-75(B) are subject to disclosure to a company because they are “otherwise kept” public records under § 25-19-103(5)(A); however, any and all identifying facts and information have to be fully redacted under § 25-19-105(f)(1)–(3). Moreover, the legal opinions are not confidential because subdivision (a)(1) of this section does not

cover 006-05-009 Ark. Code R. § GR-75(B); state law does not require that the opinions be kept by or filed with the Director of the Arkansas Department of Finance and Administration. *Ryan & Co. v. Weiss*, 371 Ark. 43, 263 S.W.3d 489 (2007).

Implied Repeal.

Section 26-55-249 is impliedly repealed by this section. *Snyder v. Martin*, 305 Ark. 128, 806 S.W.2d 358 (1991).

Inspection and Copying.

Subsection (a) limits the applicability of the Freedom of Information Act to individual tax returns; therefore, the records of motor fuel taxpayers, except those of individuals, are not excluded from inspection and copying. *Ragland v. Yeargan*, 288 Ark. 81, 702 S.W.2d 23 (1986).

26-18-304. Bonds.

(a) Any bond required by any state tax law shall be subject to the approval of the director as to form, sufficiency, value, amount, stability, and other features necessary to provide a guarantee of payment of the tax due the state under this chapter.

(b) Where a bond is required for the purpose of insuring any state tax law, and written notice of termination is required before the bond can be terminated, the party issuing the bond cannot be required to provide the written notice of termination more than sixty (60) days prior to the date the bond is to be terminated.

(c) The length of time required for the notice of termination shall be calculated from the date of receipt of the notice of termination, rather than the date of mailing.

(d) The term bond shall mean any bond, letter of credit, or assignment of a certificate of deposit.

History. Acts 1979, No. 401, § 32; A.S.A. 1947, § 84-4732; 1991, No. 678, § 1.

Motor Fuel Tax Records.

Ark. Const., Art. 19, § 12 does not require public access to corporate motor fuel tax records that include the monthly “shrinkage allowance” given to motor fuel distributors, and thus this section’s prohibition of such disclosure is constitutionally permissible. *Snyder v. Martin*, 305 Ark. 128, 806 S.W.2d 358 (1991).

Tobacco Stamp Sales.

The chancellor properly held that, because it would confer “advantage” upon a competitor, the release of “stamp deputy allowance” information was precluded by subdivision (b)(1)(P) of this section and thus should be enjoined. *Leathers v. W.S. Compton Co.*, 316 Ark. 10, 870 S.W.2d 710 (1994).

Publisher’s Notes. Acts 1991, No. 678, § 2, provided that the act “shall become effective on January 1, 1992.”

26-18-305. Examinations and investigations.

(a)(1)(A) In the administration of any state tax law, the director, for the purpose of determining the accuracy of a return or fixing any liability under any state tax law, may make an examination or investigation of the place of business, the tangible personal property, equipment, and facilities, and the books, records, papers, vouchers, accounts, and documents of any taxpayer or other person.

(B) Every taxpayer or other person and his or her agents and employees shall exhibit to the director these places and items and facilitate any examination or investigation.

(2)(A) The director may employ proper and reasonable audit methods as he or she deems necessary, including the use of sampling.

(B) If sampling is to be employed as an audit method, the taxpayer's consent to the sampling technique must be obtained at the commencement of the audit.

(b) No taxpayer shall be subjected to unnecessary examination or investigations, and only one (1) inspection of a taxpayer's books of account shall be made for each taxable year unless the taxpayer requests otherwise or unless the director, after investigation, notifies the taxpayer in writing that an additional inspection is necessary.

(c)(1) When conducting an investigation or an audit of any taxpayer, the director may, in his or her discretion, examine the records and files of any person, except when privileged by law, any other business, institution, financial institution, the records of any state agency, agency of the United States Government, or agency of any other state when permitted by agreement or reciprocity.

(2)(A) The director may compel production of these records by summons.

(B) The summons may be served directly by the director.

(d) In the administration of any state tax law, the director may:

(1) Administer oaths, conduct hearings, and compel by summons the attendance of witnesses, testimony, and the production of any books, records, papers, or other data of any person or taxpayer; or

(2)(A) Examine under oath any person regarding the business of any taxpayer concerning any matter incident to the administration of any state tax law.

(B)(i) The fees of witnesses required by the director to attend any hearing shall be the same as those allowed to the witnesses appearing before circuit courts of this state.

(ii) The fees shall be paid in the manner provided for the payment of other expenses incident to the administration of any state tax law.

(e)(1) The investigation may extend to any person that the director determines has access to information which may be relevant to the examination or investigation.

(2) When any summons requiring the production of records as described in subsection (c) of this section is served on a third-party recordkeeper, written notice of the summons shall be mailed to the taxpayer that his or her records are being summoned, at least fourteen (14) days prior to the date fixed in the summons as the day for the examination of the records.

(3) Notice to the taxpayer required by this section is sufficient if it is mailed by certified mail to the last address on record with the director.

(f) When the director has the power to issue a summons for his or her own investigative or auditing purposes, then the director shall honor any reasonable request by any taxpayer to issue a summons on the taxpayer's behalf.

(g)(1) The director or the taxpayer may apply to the circuit court of the county of the taxpayer's residence, place of business, or county

where the summons can be served as with any other case at law for any order compelling the production of the summoned records.

(2) Failure to comply with the order of the court for the production of records may be punished by the court as for contempt.

(h)(1) The cost of producing records of a third party required by a summons shall be borne by the taxpayer if he or she requests the summons to be issued.

(2)(A) If the director initiates the summons for third-party records, the director shall bear the reasonable cost of producing the records.

(B) The director may later assess the cost against any delinquent or deficient taxpayer as determined by the records.

(i)(1) The director may examine the books, records, and other documents of transportation companies, agencies, firms, or persons that conduct business by truck, rail, water, airplane, or otherwise in order to determine any sales or use tax due on out-of-state purchases and to determine which dealers are importing or shipping articles of tangible personal property and are liable for any state tax.

(2) If the transportation company, agency, firm, or person refuses to allow an examination of its books, records, and other documents, the director may petition the appropriate circuit court to require the transportation company, agency, firm, or person to show cause as to why its books, records, and other documents should not be examined and why a bond should not be required in an amount not to exceed two thousand dollars (\$2,000) for a period of not more than one (1) year to guarantee compliance with the provisions of this section.

(3) Refusal to permit the director to examine books, records, and other documents pursuant to this section is a Class C misdemeanor.

History. Acts 1979, No. 401, § 14; A.S.A. 1947, § 84-4714; Acts 1995, No. 650, § 1; 1999, No. 1277, § 11.

26-18-306. Time limitations for assessments, collection, refunds, and prosecution.

(a)(1) Except as otherwise provided in this chapter, no assessment of any tax levied under the state tax law shall be made after the expiration of three (3) years from the date the return was required to be filed or the date the return was filed, whichever period expires later.

(2) The director shall not begin court proceedings after the expiration of the three-year period unless there has been a previous assessment for the collection of the tax.

(b)(1) Notwithstanding the provisions of subsection (a) of this section, if the amount of taxable income or taxable estate for a taxpayer for any year, as returned to the United States Department of the Treasury, is changed and corrected by the Commissioner of Internal Revenue or any officer of the United States of competent authority, the taxpayer, within ninety (90) days from the receipt of the notice and demand for payment by the Internal Revenue Service, must report to the director

the corrected federal tax, taxable income, or taxable estate for the taxable period covered by the change on an amended Arkansas income tax return.

(2)(A) If there is any additional state tax due from the taxpayer because of the correction by the Internal Revenue Service, any additional state tax resulting from the issues that are included in the correction must be assessed by the director within one (1) year of the filing of the amended Arkansas income tax return by the taxpayer.

(B) However, in the instance of a taxpayer who fails to notify the director of the correction as required by this subsection, no assessment of additional state tax due from the taxpayer because of the correction by the Internal Revenue Service shall be made by the director after the expiration of eight (8) years from the date the return was required to be filed or the date the return was filed, whichever period expires later.

(C) If the assessment made by the Internal Revenue Service is appealed by the taxpayer, the director shall have three (3) years from the date of the final Internal Revenue Service assessment or date of payment of the federal assessment by the taxpayer, whichever of the two (2) periods expires later, in which to make an assessment.

(3)(A) Notwithstanding the provisions of subsection (i) of this section, if the correction by the Internal Revenue Service results in an overpayment of state income tax for the taxable year for which the correction is made, the taxpayer may receive a refund of the overpaid income tax for that year resulting from the issues that are included in the correction upon the filing of the amended return within ninety (90) days from receipt of the notice from the Internal Revenue Service.

(B) A refund shall not be paid if the amended return is filed on or after the ninety-first day following receipt of the notice from the Internal Revenue Service unless the amended return is filed within three (3) years from the time the original return was filed or two (2) years from the time the income tax due on the original return was paid, whichever of the periods expires later.

(4) A change or correction to taxable income made by the Internal Revenue Service that results in additional state income tax due from the taxpayer does not entitle the director to issue an assessment unless fewer than three (3) years have elapsed from the date the original return for the year not included in the notice was required to be filed or the date the original return was filed, whichever of the periods expires later, for:

(A) A tax year that is not included in the notice of change or correction; or

(B) An issue that is not included in the notice of change or correction.

(5) A change or correction to taxable income made by the Internal Revenue Service that results in a refund to the taxpayer does not entitle the taxpayer to receive a refund unless fewer than three (3) years have

elapsed from the date the original return for the tax year not included in the notice was filed or fewer than two (2) years have elapsed from the time that income tax due on the original return was paid, whichever of the periods expires later, for:

(A) A tax year that is not included within the notice of change or correction; or

(B) An issue that is not included in the notice of change or correction.

(c) Upon written agreement of the director and the taxpayer, the time within which the director may make a final assessment, as provided by § 26-18-401, may be extended to a date mutually agreed upon in the written agreement.

(d)(1) When, before the expiration of the time prescribed for the assessment of the tax or of extensions of the time prescribed for the assessment of the tax consented to in writing, both the director and the taxpayer have consented in writing to an assessment after that time, then the tax may be assessed at any time prior to the expiration of the time agreed upon.

(2) When the time to file a claim for a refund has not expired at the time the extension agreement is entered into, the agreement shall automatically extend the period in which a refund may be allowed or a claim for a refund may be filed to the final date agreed to in the agreement, plus sixty (60) days.

(e) If a taxpayer understates a state tax due by an amount equal to or greater than twenty-five percent (25%) in any return or report or in the case of an income tax, if the taxpayer underreports net taxable income by twenty-five percent (25%) or more, the director may assess the tax due or begin an action in court for the collection of the tax due at any time prior to the expiration of six (6) years after the return was required to be filed or the date the return was filed, whichever period expires later.

(f) In the case of a fraudulent return or failure to file a report or return required under any state tax law, the director may compute, determine, and assess the estimated amount of tax due from any information in his or her possession or may begin an action in court for the collection of the tax without assessment, at any time.

(g) Whenever a taxpayer requests an extension of time for filing any return required by any state tax law, the limitation of time for assessing any tax shall be extended for a like period.

(h) When the assessment of any tax imposed by any state law has been made within the period of limitation properly applicable to the assessment, the tax may be collected by levy or proceeding in court, but only if the levy is made or the proceeding is begun within ten (10) years after the date of the assessment of the tax.

(i)(1)(A) An amended return or verified claim for credit or refund of an overpayment of any state tax shall be filed by the taxpayer within three (3) years from the time the return was filed or two (2) years from the time the tax was paid, whichever of the periods expires later.

(B) The provisions of subdivision (i)(1)(A) of this section shall not apply to a tax paid as a result of an audit or proposed assessment.

(2) Any taxpayer who fails to file a return, underreports his or her income by twenty-five percent (25%) or more, or fails to notify the director of any change or correction by the Internal Revenue Service in the taxpayer's taxable income shall not be entitled to file an amended return or verified claim for credit or refund after the expiration of three (3) years from the date the original return or notification of change was originally due.

(j) No person shall be prosecuted, tried, or punished for any of the various criminal offenses arising under the provisions of any state tax law unless the indictment of the person is instituted within six (6) years after the commission of the offense.

(k)(1) In the case of an individual, the running of the periods specified for filing an amended return or verified claim for credit or refund shall be suspended during any period of the individual's life in which the individual is financially disabled.

(2)(A) An individual is financially disabled if the individual is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment of the individual which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months.

(B) An individual shall not be considered to have a physical or mental impairment unless proof of the existence of the impairment is furnished in a form and in a manner as the director may require.

(3) An individual shall not be treated as financially disabled during any period that the individual's spouse or any other person is authorized to act on behalf of the individual in financial matters.

(l)(1) The limitation periods in subsection (i) of this section to file a claim for credit or refund of an overpayment of state tax do not apply to a taxpayer who is a veteran if the:

(A) Overpayment of state tax claimed resulted from the:

(i) Reduction of uniformed service retired pay computed under 10 U.S.C. § 1406 or 1407, as in effect on January 1, 2009; or

(ii) Waiver of retired pay under 38 U.S.C. § 5305, as in effect on January 1, 2009; and

(B) Reduction of the uniformed service retired pay or waiver of retired pay provided in subdivision (l)(1)(A) of this section is the result of an award of compensation under a determination by the Secretary of Veterans Affairs that part or all of the payments to the taxpayer are payments made for a service-connected disability that are not included in gross income under 26 U.S.C. § 104, as in effect on January 1, 2009.

(2) An amended return or verified claim for credit or refund of an overpayment of state tax described in subdivision (l)(1) of this section shall be filed by the taxpayer within one (1) year of the date of the determination described in subdivision (l)(1)(B) of this section or February 25, 2009, whichever occurs later.

(3) A credit or refund for an overpayment of state tax shall not be allowed under this subsection for any tax year which began before January 1, 2001.

History. Acts 1979, No. 401, § 15; 1981, No. 914, § 4; A.S.A. 1947, § 84-4715; Acts 1989, No. 826, § 15; 1991, No. 685, § 6; 1993, No. 785, § 1; 1997, No. 951, § 27; 1999, No. 1126, § 1; 1999, No. 1277, § 10; 2003, No. 1718, § 2; 2007, No. 218, § 9; 2009, No. 238, § 1; 2009, No. 373, § 1; 2011, No. 983, § 2.

Publisher's Notes. Acts 1989, No. 826, § 1, provided that this act shall be known and may be cited as the "Arkansas Income Tax Technical Revenue Act of 1989".

Amendments. The 2009 amendment by No. 238 added (l).

The 2009 amendment by No. 373, in (b), inserted "resulting from the issues that are included in the correction" in (b)(2)(A), and added (b)(3) through (b)(5).

The 2011 amendment substituted "§ 1406 or 1407" for "§ 1046 or 1047" in (l)(1)(A).

RESEARCH REFERENCES

ALR. Validity and applicability of statutory time limit concerning taxpayer's claim for state tax refund. 1 A.L.R.6th 1.

Ark. L. Rev. Case Note, Pledger v. Illinois Tool Works, Inc.: Arkansas Belatedly Recognizes the Unitary Business

Principle as a Limitation of Its Power to Tax Capital Gains of Nondomiciliary Corporations, 45 Ark. L. Rev. 597.

U. Ark. Little Rock L.J. Legislative Survey, Taxation, 4 U. Ark. Little Rock L.J. 609.

CASE NOTES

ANALYSIS

Applicability.

Extensions.

Tolling of Limitations.

Applicability.

Subdivision (i)(1) of this section does not supply the standard for determining whether an Enterprise Zone Act (see § 15-4-1701 et seq.) refund claim is timely filed. *Axiom Corp. v. Leathers*, 331 Ark. 205, 961 S.W.2d 735 (1998).

Where defendant was charged with willfully attempting to evade or defeat the payment of tax, in violation of § 26-18-201(a), and was convicted of failure to pay tax, in violation of § 26-18-202, the six-year statute of limitations under subsection (j) was applicable rather than the more general three-year limitations period under § 5-1-109(b)(2); subsection (j) specifically provides a six-year limitations period for prosecutions for any of the various criminal offenses arising under the provisions of any state tax law, and it is a

well-settled principle of law that a general statute does not apply when a specific one governs the subject matter. *Owens v. State*, 354 Ark. 644, 128 S.W.3d 445 (2003).

Extensions.

The extension of the statute of limitations from three years to six years under subsection (e) for taxpayers who understate their tax liability by more than 25% does not apply to use taxes that became delinquent before this provision was effective on January 1, 1980. *Ragland v. Travel Labs., Inc.*, 286 Ark. 33, 689 S.W.2d 349 (1985).

Tolling of Limitations.

A proposed tax assessment under § 26-18-403, if contested, will toll subsection (a), which limits the time in which an assessment can be made to three years. *Ragland v. Alpha Aviation, Inc.*, 285 Ark. 182, 686 S.W.2d 391 (1985).

Cited: *Mason v. State*, 285 Ark. 479, 688 S.W.2d 299 (1985); *Jones v. Ragland*, 293 Ark. 320, 737 S.W.2d 641 (1987).

26-18-307. Notice requirements.

(a)(1) The director shall give a taxpayer notice of any assessment, demand, decision, or hearing before the director which directly involves that taxpayer.

(2)(A) All notices required to be given by the director to a taxpayer shall be either served by personal service or sent by regular mail to the taxpayer's last address on record with the particular tax section of the Revenue Division of the Department of Finance and Administration in question.

(B) Service of the notice by mail is presumptively complete upon mailing, and the director may take any action permitted by any state tax law.

(3) All notices of final assessment under § 26-18-401 shall be sent by regular mail.

(b)(1) When giving notice to the director, the taxpayer shall give notice either by mail or by personal service on the director.

(2) The notice the taxpayer gives shall be effective when postmarked or, in case of personal service, when so served.

(c) By written agreement, the director and any taxpayer may provide for any other reasonable means of giving notice.

(d) All notices shall be in writing.

History. Acts 1979, No. 401, § 33;
A.S.A. 1947, § 84-4733; Acts 2003, No.
214, § 1.

26-18-308. Disposition of revenues.

All taxes, interest, penalties, and court costs received by the director under any state tax law, unless otherwise specified in this chapter, shall be deposited in the manner stated in the applicable state tax law. Where this chapter is the governing authority for the collection of interest, penalties, and court costs, the amounts collected are general revenues and shall be so deposited to the credit of the State Apportionment Fund and allocated as provided by the Revenue Stabilization Law, § 19-5-101 et seq.

History. Acts 1979, No. 401, § 43;
A.S.A. 1947, § 84-4743.

26-18-309. Defense of director in civil suits.

When the director is a defendant in a civil suit which seeks to recover damages from him or her personally resulting from any action taken by the director in his or her official capacity, the Attorney General of this state shall provide the defense for the director.

History. Acts 1979, No. 401, § 44;
A.S.A. 1947, § 84-4744.

26-18-310. Director's authority.

(a) The director may accept payment of any state or local tax or fee by credit card when he or she determines that credit card payments are administratively feasible.

(b) The director may enter into contracts with credit card companies and may pay fees normally charged by those companies for allowing the use of their credit cards as authorized by this section.

History. Acts 1999, No. 1132, § 1.

26-18-311. Electronic tax administration policy.

(a)(1) The director may promote the benefits of and encourage the use of electronic tax administration programs, as they become available, through the use of mass communications and other means.

(2) It is the policy of the Department of Finance and Administration that:

(A) Paperless filing should be the preferred and most convenient means of filing state tax and information returns; and

(B) The department should cooperate with and encourage the private sector by encouraging competition to increase electronic filing of such returns.

(b) The director shall establish a plan to eliminate barriers, provide incentives, and use competitive market forces to increase electronic filing gradually over the next ten (10) years while maintaining existing processing times for paper returns.

History. Acts 1999, No. 1126, § 2.

26-18-312. Signatures on electronic forms.

(a) The Director of the Department of Finance and Administration shall develop procedures for the acceptance of signatures on state tax returns or reports in digital or other electronic form.

(b) Until such time as such procedures are in place, the director may:

(1) Waive the requirement of a signature for a particular type or class of return, declaration, statement, or other document required or permitted to be made in writing under state tax laws and regulations; or

(2) Provide for alternative methods of signing or subscribing a particular type or class of return, declaration, statement, or other document required or permitted to be made in writing under state tax laws and regulations.

History. Acts 1999, No. 1126, § 3.

26-18-313. Standard of proof for exemptions, deductions, and credits.

The standard of proof for a taxpayer to establish facts to support a claim for a tax exemption, tax deduction, or tax credit is clear and convincing evidence.

History. Acts 2009, No. 755, § 1; 2011, No. 983, § 3.

Amendments. The 2011 amendment inserted “tax” in three places.

SUBCHAPTER 4 — ASSESSMENTS

SECTION.

26-18-401. Assessment and collection of taxes generally.

26-18-402. Jeopardy assessment.

26-18-403. Proposed assessments.

SECTION.

26-18-404. Taxpayer relief.

26-18-405. Hearing on proposed assessments.

26-18-406. Judicial relief.

A.C.R.C. Notes. Acts 1997, No. 1139, § 10, provided: “The General Assembly intends, by the passage of this amendment to the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq., to clarify its intent that taxpayers involved in state tax disputes with the Arkansas Department of Finance and Administration shall have, as much as possible, the opportunity to secure an objective review of their dispute by a court at law through: (1) the posting of bond method; (2) the payment after assessment method; or (3) the claim for refund method, after the payment by the taxpayer of all state taxes claimed to be due from the taxpayer for at least one complete taxable period involved in the audit period. It is also intended by the General Assembly that the courts of this state are to recognize the ‘divisible tax theory’ applicable to the review of federal tax dispute by federal courts, as also being applicable to the review of state tax disputes by the courts of this state.”

Cross References. Assessment of taxes generally, § 26-26-101 et seq.

Collection of taxes generally, § 26-34-101 et seq.

Effective Dates. Acts 1981, No. 914, § 9: Dec. 31, 1980. Emergency clause provided: “It is hereby found and determined by the General Assembly that certain provisions of the State’s income tax laws that have counterparts in the Federal income tax laws do not coincide with recent amendments to the Federal income tax

laws; that clarification needs to be made to provisions of the Arkansas Tax procedure Act (Act 401 of 1979) with regard to the statute of limitations on assessments, the judicial review of contested assessments and the automatic assertion of the 10% negligence penalty (as apparently approved by the Supreme Court in its decision in *Great Lakes Chemical Co. v. Wooten*, 266 Ark. 511, 514 (1979) which decision was rendered after the adoption by the General Assembly of Act 401 of 1979, but before the effective date of that Act); and that this Act is immediately necessary to make the Arkansas income tax law conform with the Federal income tax law, to clarify any possible question as to the applicability of the Statute of Limitations on assessment and judicial review of contested assessments, and to stop the automatic assessment of the 10% negligence penalty on any deficiency in tax determined by the Commissioner. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect for all periods beginning after December 31, 1980.”

Acts 1997, No. 1139, § 14: July 1, 1997. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the taxpayers’ procedural rights to pursue an objective judicial review in challenging a state tax assessment are, in some instances,

being unfairly denied to Arkansas taxpayers who have legitimate disputes with the Arkansas Department of Finance and Administration. It is therefore held that the provisions of this act, are needed to cure this problem for state taxpayers. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on and after July 1, 1997.”

Acts 2009, No. 755, § 3: July 31, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that many manufacturers and other businesses have found that it is substantially more difficult to prove they are entitled to a tax exemption, deduction, or credit in Arkansas than in most other states based on the court interpretation that the taxpayer must present facts that establish their right to a tax

exemption, deduction, or credit “beyond a reasonable doubt” and “to doubt is to deny” exemptions; that the standard of proof for the taxpayer to prove an exemption, deduction, or credit should be changed to clear and convincing evidence, and that in trials de novo or appeals within the judicial system, no presumption of correctness should attach to positions of taxing authorities at the administrative level. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

RESEARCH REFERENCES

Am. Jur. 72 Am. Jur. 2d, State Tax., § 704 et seq.
C.J.S. 84 C.J.S., Tax., § 390 et seq.
U. Ark. Little Rock L.J. Stafford,

Separation of Powers and Arkansas Administrative Agencies: Distinguishing Judicial Power and Legislative Power, 7 U. Ark. Little Rock L.J. 279.

26-18-401. Assessment and collection of taxes generally.

(a)(1) The director shall make the inquiries, determinations, and assessments of all state taxes, including interest, additions to taxes, and assessable penalties, imposed by all state tax laws.

(2) The proposed assessment shall be made by recording the liability of the taxpayer in the office of the director in accordance with rules or regulations prescribed by the director.

(3) Upon request of the taxpayer, the director shall furnish the taxpayer a copy of the record of the assessment.

(b)(1) The director shall collect all taxes imposed by any state tax law.

(2)(A)(i) The director shall issue a final assessment to each taxpayer liable for the unpaid tax.

(ii) The final assessment shall state the amount of the assessment and demand payment within ten (10) days of the assessment.

(iii) The final assessment shall not be issued before the expiration of time for the taxpayer to request an administrative hearing under § 26-18-404.

(B) If the taxpayer has requested administrative relief under § 26-18-404 the final assessment shall be issued according to § 26-18-405.

(C)(i) If the taxpayer has paid the assessment before the time for the issuance of the final assessment, no final assessment shall be issued.

(ii) The taxpayer may seek to recover the payment of the assessment only if § 26-18-403 or § 26-18-406 applies.

(3) Upon receipt of the final assessment from the director, the person liable for the tax shall pay the stated amount including any interest, additions to tax, and assessable penalties at the place and time stated in the final assessment.

History. Acts 1979, No. 401, § 12; A.S.A. 1947, § 84-4712; Acts 2003, No. 1718, §§ 3-5.

CASE NOTES

ANALYSIS

Business Transfers.
Limitations of Action.
Reassessments.
Venue.

Business Transfers.

State held not to waive right to enforce claim for tax deficiencies of former owner discovered after transfer of business to new owner. *Commissioner of Revenues v. Belote*, 226 Ark. 295, 289 S.W.2d 665 (1956) (decision under prior law).

Limitations of Action.

Where record did not disclose what particular months alleged unpaid taxes were charged against in situation where some of the months of the year in question might be barred and some months not, entire total for year could have been incurred in months not barred and plea of statute of limitations as to entire year was without merit. *Scurlock v. Yarbrough*, 224 Ark. 113, 271 S.W.2d 916 (1954) (decision under prior law).

Where taxpayers failed to file their protests on additional sales and individual tax assessments imposed against them by the Department of Finance and Administration until after more than a year had passed since said assessments were paid, dismissal of their complaint was war-

ranted. *Mac v. Weiss*, 360 Ark. 384, 201 S.W.3d 897 (2005).

Reassessments.

Reassessment and collection of taxes precluded in view of statute preventing proceedings for reassessment except for actual fraud. *McCarroll v. Hollis & Co.*, 201 Ark. 931, 148 S.W.2d 167 (1941) (decision under prior law).

Venue.

Where defense to state's claim for unpaid sales taxes was three year statute of limitations and not "no tax due," venue of suit to enjoin levy of execution was in Pulaski Chancery Court and not in county in which certificate of indebtedness of record had been placed. *Scurlock v. Yarbrough*, 224 Ark. 113, 271 S.W.2d 916 (1954) (decision under prior law).

Former statute governing penalties for tax report violations did not require that the failure to report be deemed to be an action committed in part at the taxpayer's residence; accordingly, where a taxpayer was required by law to file a return in a county other than that of his residence, prosecution for failure to file had to be brought in the county of filing, not the county of residence. *Taylor v. Partain*, 267 Ark. 476, 591 S.W.2d 653 (1980) (decision under prior law).

Cited: *Ragland v. Alpha Aviation, Inc.*, 285 Ark. 182, 686 S.W.2d 391 (1985).

26-18-402. Jeopardy assessment.

(a) Regardless of the date on which a return or payment is due or a taxable period of a taxpayer closes, the director shall declare the taxable period of any state tax terminated for that person and shall issue a jeopardy assessment and assess the tax from any information in his or her possession, notify the taxpayer, and demand immediate payment if the director believes that:

(1) The tax liability of any person who has a bond on file with the director to indemnify the state for the payment of any state tax is in excess of the amount of the bond;

(2) A taxpayer intends to depart from the state, to remove his or her property therefrom, or to conceal himself or herself or any of his or her property therein;

(3) A taxpayer intends to discontinue business without making adequate provisions for payment of all state tax; or

(4) A taxpayer intends to do any other act tending to prejudice, jeopardize, or render wholly or partially ineffectual proceedings to compute, assess, or collect any state tax.

(b)(1) Within five (5) days after the date on which a notice and demand for payment is made under subsection (a) of this section, the director shall provide the taxpayer with a written statement of the information upon which the director relies in making such assessment.

(2) If the taxpayer fails or refuses to pay the tax upon demand of the director or requests a hearing before the director within five (5) business days after the day the taxpayer is furnished the written statement described in subdivision (1) of this subsection, the tax shall become delinquent and the director shall proceed to issue a certificate of indebtedness.

(c) When the taxpayer requests a hearing, the director shall hold the hearing within five (5) business days of receipt of the request. After a hearing, the director shall determine whether the making of the assessment under subsection (a) of this section is reasonable under the circumstances and shall render his or her decision. The taxpayer has three (3) days after the receipt of the director's decision either to pay the tax and applicable penalty and interest due or to protest the decision of the director as provided by § 26-18-406(a) prior to the director's issuing a certificate of indebtedness.

(d) Whenever the director issues a jeopardy assessment, he or she shall have the burden of proving the reasonableness of the assessment.

History. Acts 1979, No. 401, § 13; A.S.A. 1947, § 84-4713; Acts 1989, No. 590, §§ 4, 5.

CASE NOTES

Cited: *Martin v. Couey Chrysler Plymouth, Inc.*, 308 Ark. 325, 824 S.W.2d 832 (1992).

26-18-403. Proposed assessments.

(a)(1) If any taxpayer fails to file any return as required by any state tax law, the director, from any information in his or her possession or obtainable by him or her, may determine the correct amount of tax for the taxable period. If a return has been filed, the director shall examine the return and make any audit or investigation that he or she considers necessary.

(2) When no return has been filed and the director determines that there is a tax due for the taxable period or when a return has been filed and the director determines that the tax disclosed by the return is less than the tax disclosed by his or her examination, the director shall propose the assessment of additional tax plus penalties, as the case may be, and shall give notice of the proposed assessment to the taxpayer. The notice shall explain the basis for the proposed assessment and shall state that a final assessment, as provided by § 26-18-401, will be made if the taxpayer does not protest such proposed assessment as provided by § 26-18-404. The taxpayer does not have to protest the proposed assessment to later be entitled to exercise the right to seek a judicial review of the assessment, pursuant to the provisions of § 26-18-406.

(b) Any demand for additional payment of a state tax which is made as the result of a verification of a mathematical error on the return shall not be deemed to be a proposed assessment under the provisions of this section and shall not be subject to the hearing or appeal provisions of this chapter.

History. Acts 1979, No. 401, § 18; A.S.A. 1947, § 84-4718; Acts 1997, No. 1139, § 1.

A.C.R.C. Notes. Acts 1997, No. 1139, § 10, provided: "The General Assembly intends, by the passage of this amendment to the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq., to clarify its intent that taxpayers involved in state tax disputes with the Arkansas Department of Finance and Administration shall have, as much as possible, the opportunity to secure an objective review of their dispute by a court at law through:

(1) the posting of bond method; (2) the payment after assessment method; or (3) the claim for refund method, after the payment by the taxpayer of all state taxes claimed to be due from the taxpayer for at least one complete taxable period involved in the audit period. It is also intended by the General Assembly that the courts of this state are to recognize the 'divisible tax theory' applicable to the review of federal tax dispute by federal courts, as also being applicable to the review of state tax disputes by the courts of this state."

CASE NOTES**ANALYSIS**

Due Process.
Tolling of Limitations.

Due Process.

The state did not deprive the taxpayers of property without due process by filing a certificate of indebtedness, where the

state obtained a tax lien only after giving the taxpayers several notices and an opportunity to be heard. *Ross v. Martin*, 800 F.2d 808 (8th Cir. 1986).

Tolling of Limitations.

A proposed tax assessment under this section, if contested, will toll subsection (a) of § 26-18-306, which limits the time

in which an assessment can be made to three years. *Ragland v. Alpha Aviation, Inc.*, 285 Ark. 182, 686 S.W.2d 391 (1985).

26-18-404. Taxpayer relief.

(a) Any taxpayer who wishes to seek administrative relief from any proposed assessment of taxes or from a denial of a claim for refund by the director shall follow the procedure provided by this section.

(b)(1) A taxpayer may at his or her option either request the director to consider his or her request for relief solely upon written documents furnished by the taxpayer or upon the written documents and any evidence produced by the taxpayer at a hearing.

(2) A taxpayer who requests the director to render his or her decision based on written documents is not entitled by law to any other administrative hearing prior to the director's rendering of his or her decision and, if necessary, the issuing of a final assessment and demand for payment or issuing of a certificate of indebtedness.

(c)(1) Within sixty (60) days after service of notice of the proposed assessment or denial of a claim for refund, the taxpayer may file with the director a written protest under oath, signed by the taxpayer or the taxpayer's authorized agent, setting forth the taxpayer's reasons for opposing the proposed assessment or the denial of a claim for refund.

(2) No administrative relief will be available to a taxpayer who fails to protest or to a taxpayer who fails to request an extension of time to protest a proposed assessment of tax or denial of a claim for refund within the sixty (60) days following the service of notice of the proposed assessment or denial of a claim for refund.

(d) The director may, in his or her discretion, extend the time for filing a protest for any period of time not to exceed an additional ninety-day period.

History. Acts 1979, No. 401, § 19; A.S.A. 1947, § 84-4719; Acts 1997, No. 1139, §§ 2, 3; 1999, No. 1277, §§ 1, 2; 2007, No. 212, § 1.

A.C.R.C. Notes. Acts 1997, No. 1139, § 10, provided: "The General Assembly intends, by the passage of this amendment to the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq., to clarify its intent that taxpayers involved in state tax disputes with the Arkansas Department of Finance and Administration shall have, as much as possible, the opportunity to secure an objective review

of their dispute by a court at law through: (1) the posting of bond method; (2) the payment after assessment method; or (3) the claim for refund method, after the payment by the taxpayer of all state taxes claimed to be due from the taxpayer for at least one complete taxable period involved in the audit period. It is also intended by the General Assembly that the courts of this state are to recognize the 'divisible tax theory' applicable to the review of federal tax dispute by federal courts, as also being applicable to the review of state tax disputes by the courts of this state."

CASE NOTES

Appeals.

This chapter requires a particular type of protest in order to initiate the adminis-

trative review procedures outlined in this section and § 26-18-405, which involve contesting proposed assessments, while

paying the final assessment under protest is required by § 26-18-406(a)(1) in order to preserve the taxpayer's right to judicial review. *Hercules, Inc. v. Pledger*, 319 Ark. 702, 894 S.W.2d 576 (1995).

Cited: *Ragland v. Alpha Aviation, Inc.*, 285 Ark. 182, 686 S.W.2d 391 (1985); *Ross v. Martin*, 800 F.2d 808 (8th Cir. 1986); *Ragland v. General Tire & Rubber Co.*, 297 Ark. 394, 763 S.W.2d 70 (1989).

26-18-405. Hearing on proposed assessments.

(a)(1) The director shall appoint a hearing officer to review all written protests submitted by taxpayers, hold all hearings, and make written findings as to the applicability of the proposed assessment or the denial of the claim for refund.

(2) Decisions of the hearing officer shall be final unless revised by the director.

(3) The hearings on written and oral protests and determinations made by the hearing officer shall not be subject to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) The director may appoint one (1) or more hearing officers, but the persons occupying these appointments shall not contemporaneously with the holding of these appointments have any other administrative duties within the Revenue Division of the Department of Finance and Administration.

(c) The actual hearing on the written protest shall be held in any city in which the division maintains a field audit district office or in such other city as the director shall, in his or her discretion, designate.

(d)(1)(A) All written protests filed with the director shall be delivered promptly to the hearing officer.

(B) The hearing officer shall set the time and place for the hearing on a written protest and shall give the taxpayer reasonable notice of the hearing.

(C) If it is not possible for the hearing officer to hold a hearing and issue a decision on a protest of a proposed assessment within one hundred eighty (180) days after the taxpayer files a written protest for reasons that the hearing officer determines are beyond the taxpayer's control, the director shall waive the interest for the period from the time the protest is filed until the final assessment is issued.

(2) At the hearing, the taxpayer may be represented by an authorized representative and may present evidence in support of his or her position.

(3) After the hearing, the hearing officer shall render his or her decision in writing and shall serve copies upon both the taxpayer and the section or division of the Department of Finance and Administration which proposed the assessment or the denial of the claim for refund.

(4)(A)(i) If the proposed assessment or denial of a claim for refund is sustained, in whole or part, the taxpayer or legal counsel for the director may request in writing, within twenty (20) days of the mailing of the decision, that the director revise the decision of the hearing officer.

(ii) No request for revision will be considered unless it is received by the director within twenty (20) days of the mailing of the hearing decision.

(iii) Either the taxpayer or legal counsel for the director shall provide a copy of any written request for revision to the other.

(iv) The director may hold the supplemental proceedings on any request for revision and shall issue a decision on the request within sixty (60) days of the receipt of the request for revision.

(B) If the director refuses to make a revision or if the taxpayer or legal counsel for the director does not make a request for revision, then the director shall send either:

(i) A final assessment to the taxpayer, as provided by § 26-18-401, that is made upon the final determination of the hearing officer that sustained a proposed assessment of tax; or

(ii) A notice in writing to both the taxpayer and legal counsel for the director, if a revision was requested, of his or her decision not to revise a decision that resulted in no tax due, including the denial of a claim for refund.

(C)(i) If the director revises the decision of the hearing officer, the director shall send the final decision of the director to the taxpayer and to the legal counsel for the director.

(ii) A notice of final assessment shall be made upon the decision of the director if the director's decision sustained a proposed assessment of tax.

(iii) No further notice will be issued for a final decision of the director that results in no tax due, including the denial of a claim for refund.

(D) A taxpayer may not request revision of a decision issued by the director under this subdivision (d)(4).

(e) A taxpayer may seek relief from the final decision of the hearing officer or the director on a final assessment of a tax deficiency or a notice of denial of a claim for refund by following the procedure set forth in § 26-18-406.

(f)(1) In addition to the hearing procedures set out in subsections (a)-(e) of this section, the director may hold administrative hearings by telephone, video conference, or other electronic means if the director determines that conducting the hearing in such a manner:

(A) Is in the best interest of the taxpayer and the department;

(B) Is agreed to by both parties;

(C) Is not fiscally unsound or administratively burdensome; and

(D) Adequately protects the confidentiality of the taxpayer's information.

(2) The director may contract with third parties for all services necessary to conduct hearings by telephone, video, or other electronic means.

(3) Any person who enters into a contract with the director to provide services necessary to conduct hearings by telephone, video, or other electronic means shall be subject to the requirements of this chapter providing for the confidentiality of all taxpayer records.

History. Acts 1979, No. 401, § 20; A.S.A. 1947, § 84-4720; Acts 1993, No. 332, § 4; 1995, No. 655, § 1; 1997, No. 1139, §§ 4-6; 1999, No. 1277, §§ 3-5; 2007, No. 212, § 2; 2011, No. 585, § 1.

A.C.R.C. Notes. Acts 1997, No. 1139, § 10, provided: "The General Assembly intends, by the passage of this amendment to the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq., to clarify its intent that taxpayers involved in state tax disputes with the Arkansas Department of Finance and Administration shall have, as much as possible, the opportunity to secure an objective review of their dispute by a court at law through: (1) the posting of bond method; (2) the payment after assessment method; or (3)

the claim for refund method, after the payment by the taxpayer of all state taxes claimed to be due from the taxpayer for at least one complete taxable period involved in the audit period. It is also intended by the General Assembly that the courts of this state are to recognize the 'divisible tax theory' applicable to the review of federal tax dispute by federal courts, as also being applicable to the review of state tax disputes by the courts of this state."

Amendments. The 2011 amendment added (d)(1)(A) and redesignated former (d)(1) as (d)(1)(B); added (d)(1)(C); subdivided (d)(4)(A)(i); redesignated former (d)(4)(A)(ii) as (d)(4)(A)(iii); and inserted (d)(4)(A)(iv).

CASE NOTES

ANALYSIS

Appeals.

Source of Relief.

Tolling of Limitations.

Appeals.

This chapter requires a particular type of protest in order to initiate the administrative review procedures outlined in this section and § 26-18-404, which involve contesting proposed assessments, while paying the final assessment under protest is required by § 26-18-406(a)(1) in order to preserve the taxpayer's right to judicial review. *Hercules, Inc. v. Pledger*, 319 Ark. 702, 894 S.W.2d 576 (1995).

Source of Relief.

When the legality of the underlying tax act is not in issue, but only the correctness

of the person assessed, the taxpayer does not have a cause of action for an illegal exaction, but the taxpayer's relief is that which is provided by this section and § 26-18-406. *Cook v. State*, 312 Ark. 438, 850 S.W.2d 309 (1993).

Tolling of Limitations.

A proposed tax assessment under § 26-18-403, if contested, will toll subsection (a) of § 26-18-306, which limits the time in which an assessment can be made to three years. *Ragland v. Alpha Aviation, Inc.*, 285 Ark. 182, 686 S.W.2d 391 (1985).

Cited: *Ross v. Martin*, 800 F.2d 808 (8th Cir. 1986); *Taber v. Pledger*, 302 Ark. 484, 791 S.W.2d 361 (Ark. 1990); *Little Rock Cleaning Sys. v. Weiss*, 326 Ark. 1007, 935 S.W.2d 268 (1996); *Mac v. Weiss*, 360 Ark. 384, 201 S.W.3d 897 (2005).

26-18-406. Judicial relief.

(a) After the issuance and service on the taxpayer of the final assessment of a deficiency in tax that is not protested by the taxpayer under § 26-18-403 or a final determination of the hearing officer or the director under § 26-18-405, a taxpayer may seek judicial relief from the final determination or assessment by:

(1)(A) Paying the entire amount of state tax due for any taxable period or periods covered by the final assessment within one (1) year of the date of the final assessment and filing suit to recover that amount within one (1) year of the date of payment.

(B) The director may proceed with collection activities including the filing of a certificate of indebtedness as authorized under § 26-18-701 within thirty (30) days of the issuance of the final assessment

for any assessed but unpaid state taxes, penalties, or interest owed by the taxpayer for other taxable periods covered by the final assessment while the suit for refund is being pursued by the taxpayer for other taxable periods covered by the final assessment;

(2)(A) Filing with the director a bond in double the amount of the tax deficiency due within thirty (30) days of the issuance and service on the taxpayer of the final assessment and by filing suit within thirty (30) days thereafter to stay the effect of the director's determination.

(B) The bond shall be subject to the conditions that the taxpayer shall:

(i) File suit within thirty (30) days after filing the bond;

(ii) Faithfully and diligently prosecute the suit to a final determination; and

(iii) Pay any deficiency found by the court to be due and pay any court cost assessed against him or her.

(C) A taxpayer's failure to file suit, diligently prosecute the suit, or pay any tax deficiency and court costs, as required by subdivision (a)(2)(B) of this section, shall result in the forfeiture of the bond in the amount of the assessment and assessed court costs; or

(3) Filing suit to recover assessed tax, penalty, and interest paid prior to the time for issuance of the final assessment within one (1) year of the date of the final determination of the hearing officer or the director under § 26-18-405.

(b) A taxpayer may seek judicial relief from a final determination denying a claim for refund by filing suit to recover the amount claimed within one (1) year from the mailing of the denial of the director under § 26-18-507, or a final determination of the hearing officer or the director under § 26-18-405, whichever is later.

(c)(1) Jurisdiction for a suit to contest a determination of the director under this section shall be in the Pulaski County Circuit Court or the circuit court of the county in which the taxpayer resides or has his or her principal place of business, where the matter shall be tried de novo.

(2) An appeal will lie from the circuit court to the Supreme Court, as in other cases provided by law.

(3) A presumption of correctness or weight of authority will not attach to a determination of the director in a trial de novo or an appeal under this section.

(d)(1) The methods provided in this section shall be the sole alternative methods for seeking relief from a written decision of the director establishing a deficiency in tax or disallowing a claim for refund.

(2) No injunction shall issue to stay proceedings for assessment or collection of any taxes levied under any state tax law.

(e)(1) In any court proceeding under this section, the:

(A) Prevailing party may be awarded a judgment for court costs; and

(B) Taxpayer may be awarded reasonable attorney fees if the:

(i) Director revised a decision of the hearing officer in favor of the taxpayer under § 26-18-405;

- (ii) Taxpayer is the prevailing party in an action for judicial relief from the determination of the director under this section; and
 - (iii) Court finds that the director’s revision was without a reasonable basis in law and fact.
- (2) A judgment of court costs entered by the court in favor of either party or of attorney fees awarded in favor of the taxpayer shall be treated, for purposes of this chapter, in the same manner as an overpayment or deficiency of tax, except that interest or penalty shall not be allowed or assessed with respect to any judgment for court costs.
- (f) If a taxpayer pays the tax, penalty, and interest assessed under § 26-18-403 and does not request administrative relief according to § 26-18-404, then:
- (1) The taxpayer may seek judicial relief from the assessment only if the taxpayer files suit in circuit court within one (1) year from the date of payment of the assessment; and
 - (2) The provisions of § 26-18-507 shall not apply to the payments.

History. Acts 1979, No. 401, §§ 21, 22; 1981, No. 914, § 5; A.S.A. 1947, §§ 84-4721, 84-4722; Acts 1997, No. 1139, § 7; 1999, No. 1277, § 6; 2003, No. 1718, §§ 6-8; 2009, No. 755, § 2; 2011, No. 585, § 2.

A.C.R.C. Notes. Acts 1997, No. 1139, § 10, provided: “The General Assembly intends, by the passage of this amendment to the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq., to clarify its intent that taxpayers involved in state tax disputes with the Arkansas Department of Finance and Administration shall have, as much as possible, the opportunity to secure an objective review of their dispute by a court at law through: (1) the posting of bond method; (2) the payment after assessment method; or (3)

the claim for refund method, after the payment by the taxpayer of all state taxes claimed to be due from the taxpayer for at least one complete taxable period involved in the audit period. It is also intended by the General Assembly that the courts of this state are to recognize the ‘divisible tax theory’ applicable to the review of federal tax dispute by federal courts, as also being applicable to the review of state tax disputes by the courts of this state.”

Amendments. The 2009 amendment inserted (c)(3)

The 2011 amendment subdivided part of (e)(1); added (e)(1)(B); and in (e)(2), inserted “or of attorney fees awarded in favor of the taxpayer,” deleted “no” preceding “interest or penalty,” and inserted “not” preceding “be allowed.”

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Tyler, Survey of Business Law, 3 U. Ark. Little Rock L.J. 149.	Legislative Survey, Taxation, 4 U. Ark. Little Rock L.J. 609.
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CASE NOTES

ANALYSIS	Injunctions.
Appeals.	Legislative Intent.
Burden of Proof.	Notice of Deficiency.
Certificates of Indebtedness.	Paying Under Protest.
Claim Upheld.	Relief Precluded.
Exclusivity.	Source of Relief.
	Venue.

Appeals.

Appeal to chancery court automatically superseded certificate of indebtedness. *Hardin v. Norsworthy*, 204 Ark. 943, 165 S.W.2d 609 (1942) (decision under prior law).

State had right of appeal from injunction restraining circuit clerk from issuing writ of execution on certificate of indebtedness. *Hardin v. Norsworthy*, 204 Ark. 943, 165 S.W.2d 609 (1942) (decision under prior law).

This chapter requires a particular type of protest in order to initiate the administrative review procedures outlined in §§ 26-18-404 and 26-18-405, which involve contesting proposed assessments, while paying the final assessment under protest is required by subdivision (a)(1) of this section in order to preserve the taxpayer's right to judicial review. *Hercules, Inc. v. Pledger*, 319 Ark. 702, 894 S.W.2d 576 (1995).

Burden of Proof.

Where taxpayer was not claiming an exemption from tax, but rather was claiming that a tax could not be levied upon it, the Department of Finance and Administration had the burden of proving the propriety of the tax, and all doubts and ambiguities had to be resolved in favor of the taxpayer. *Pledger v. Troll Book Clubs, Inc.*, 316 Ark. 195, 871 S.W.2d 389 (1994).

Certificates of Indebtedness.

Where payment had been made and taxpayer sued to recover overcharge, certificate of indebtedness had performed its function and there was no lien. *Hardin v. Gautney*, 204 Ark. 723, 164 S.W.2d 427 (1942) (decision under prior law).

Issuance of certificate of indebtedness within 30-day period allowing merchant to appeal to chancery court was proper, since tax amount fixed should have been paid and an action brought for refund of any excess shown to have been collected. *Hardin v. Norsworthy*, 204 Ark. 943, 165 S.W.2d 609 (1942) (decision under prior law).

Proceeding for issuance of certificate of indebtedness held not a common law action wherein trial by jury was guaranteed, and right to jury trial was not accorded by statute. *Hardin v. Norsworthy*, 204 Ark. 943, 165 S.W.2d 609 (1942) (decision under prior law).

Regularity of signature to certificate of indebtedness could not be raised for the first time in the Supreme Court. *Cook v. Hickenbottom*, 212 Ark. 768, 207 S.W.2d 721 (1948) (decision under prior law).

Where merchant did not refute claim of tax indebtedness, filing of certificate of indebtedness became a mandate, and a lien attached from time certificate was entered. *Hardin v. Norsworthy*, 204 Ark. 943, 165 S.W.2d 609 (1942) (decision under prior law).

Claim Upheld.

Claim for refund survived a motion to dismiss under ARCP 12(b)(6). *Little Rock Cleaning Sys. v. Weiss*, 326 Ark. 1007, 935 S.W.2d 268 (1996).

Exclusivity.

The fact that § 26-18-405(e) states that a "taxpayer may seek relief" under this section takes nothing away from the clarity of the exclusivity language of this section. Nor does the fact that the second sentence of subsection (d) states that there shall be no injunctive relief against assessment or collection. It gives the taxpayer the exclusive method of challenge. *Taber v. Pledger*, 302 Ark. 484, 791 S.W.2d 361 (Ark. 1990).

Injunctions.

Interdiction against injunction could only have reference to taxes lawfully assessed and to lawful methods used in collection of taxes. *Hardin v. Gautney*, 204 Ark. 723, 164 S.W.2d 427 (1942) (decision under prior law).

Evidence that merchant was misled into thinking another hearing would be accorded was insufficient to justify granting of injunction restraining issuance of writ of execution on certificate of indebtedness. *Hardin v. Norsworthy*, 204 Ark. 943, 165 S.W.2d 609 (1942) (decision under prior law).

One had 30 days from filing of certificate of indebtedness in which to bring injunction proceedings in county where certificate was filed where person alleged that no part of tax amount claimed was owing. *Scurlock v. Little*, 224 Ark. 109, 271 S.W.2d 914 (1954) (decision under prior law).

Legislative Intent.

In enacting this section, the General Assembly had in mind at least two rea-

sons for requiring a taxpayer to designate specifically any payment as being under protest when seeking judicial review of a final deficiency assessment: first, subsection (c) mandates that all taxes and penalties paid under protest are to be held by the director in an escrow account denominated the "Tax Protest Fund Account," and that refunds are to be made from this account; second, a taxpayer who has protested and pursued an earlier administrative review of a proposed assessment under § 26-18-404 may reasonably decide not to pursue further adjustments of the assessment or judicial review of the final determination. *Hercules, Inc. v. Pledger*, 319 Ark. 702, 894 S.W.2d 576 (1995).

Notice of Deficiency.

Purchaser of business who was issued a permit was entitled to notice of deficiency, and notice to former owner mailed six months after sale was insufficient. *Thompson v. Chadwick*, 221 Ark. 720, 255 S.W.2d 687 (1953) (decision under prior law).

Paying Under Protest.

Protest is commonly understood to mean a formal disapproval or objection issued by a concerned party. *Hercules, Inc. v. Pledger*, 319 Ark. 702, 894 S.W.2d 576 (1995).

While a payment which is not made under protest is deposited into general revenues and becomes available for immediate use by the state, a payment made under protest only becomes available for the state's use after the taxpayer fails to file suit within the one year period or after judicial determination that the deficiency assessment was valid. *Hercules, Inc. v. Pledger*, 319 Ark. 702, 894 S.W.2d 576 (1995).

Relief Precluded.

General Assembly has right to designate a period within which one alleged to owe state on tax will be required to make his defense. *Hardin v. Gautney*, 204 Ark. 723, 164 S.W.2d 427 (1942) (decision under prior law).

Limitation of 30 days applied with equal force to litigant who sought relief in his county of residence where right to assess any tax was challenged and to litigant who only questioned amount of tax that had been legally assessed, some part of which was due. *Hardin v. Gautney*,

204 Ark. 723, 164 S.W.2d 427 (1942) (decision under prior law).

Where tax was collected by mercantile establishment from its customers, it could not thereafter question the applicability of the tax to particular sales in order either to retain tax money for itself or to recover it from state, since such action would constitute unjust enrichment. *Cook v. Sears-Roebuck & Co.*, 212 Ark. 308, 206 S.W.2d 20 (1947) (decision under prior law).

Taxpayer who was given due notice of filing certificate of indebtedness could not wait six months after filing of certificate and issuance of first execution and then question validity of tax assessed against him. *Cook v. Hickenbottom*, 212 Ark. 768, 207 S.W.2d 721 (1948) (decision under prior law).

Wife estopped to assert her claim against tax lien where she allowed husband to use her money. *Cook v. Pranger*, 215 Ark. 2, 219 S.W.2d 420 (1949) (decision under prior law).

Imposition of unpaid withholding taxes, interest, and penalties against employers was proper; there was no error in failing to give the employers additional credit for taxes certain employees claimed they had paid where (1) the Arkansas Department of Finance and Administration's records did not show that the employees had paid their taxes and (2) the employers were not entitled to any credit under § 26-51-916 because they had not shown reasonable cause for failing to withhold and remit taxes. *Morris v. Ark. Dep't of Fin. & Admin.*, 82 Ark. App. 124, 112 S.W.3d 378 (2003).

Where taxpayers failed to file their protests on additional sales and individual tax assessments imposed against them by the Department of Finance and Administration until after more than a year had passed since said assessments were paid, dismissal of their complaint was warranted. *Mac v. Weiss*, 360 Ark. 384, 201 S.W.3d 897 (2005).

Source of Relief.

When the legality of the underlying tax act is not in issue, but only the correctness of the person assessed, the taxpayer does not have a cause of action for an illegal exaction, but the taxpayer's relief is that which is provided by § 26-18-405 and this section. *Cook v. State*, 312 Ark. 438, 850 S.W.2d 309 (1993).

Venue.

If controversy went only to proposition that transaction was not taxable or, if taxable, person assessed was not person charged by law with payment, such issue was determinable by chancery court of county where it was sought to compel collection, that is, where the certificate, *prima facie*, created a lien. *Hardin v. Gautney*, 204 Ark. 723, 164 S.W.2d 427 (1942) (decision under prior law).

If issue in controversy related only to amount of valid tax to be paid, the General Assembly could require payment as a condition precedent to the right to litigate as to any alleged overcharge and since fund was then transmitted to Little Rock, legislature could fix venue in Pulaski County. *Hardin v. Gautney*, 204 Ark. 723, 164 S.W.2d 427 (1942) (decision under prior law).

Where taxpayer's defense to state's claim for unpaid sales taxes was the three year statute of limitations and he did not claim "no tax due," venue of his suit to enjoin levy of execution was in Pulaski Chancery Court and not in county in which certificate of indebtedness of record had been placed against him. *Scurlock v. Yarbrough*, 224 Ark. 113, 271 S.W.2d 916 (1954) (decision under prior law).

It was only where the taxpayer claimed "no tax due" that he would invoke the venue of his county of residence to bring action to enjoin levy of execution of unpaid

sales taxes; in other cases, taxpayer had to pay amount claimed and proceed in Pulaski Chancery Court to recover overcharge. *Scurlock v. Yarbrough*, 224 Ark. 113, 271 S.W.2d 916 (1954) (decision under prior law).

Plaintiff could not obtain jurisdiction by an injunction suit in court of his residence until certificate of indebtedness was filed in that court. *Scurlock v. Hardscrabble Country Club*, 224 Ark. 629, 275 S.W.2d 638 (1955) (decision under prior law).

Cited: *Ragland v. K-Mart Corp.*, 274 Ark. 297, 624 S.W.2d 430 (1981); *Little Rock Mun. Water Works v. Ragland*, 279 Ark. 324, 651 S.W.2d 78 (1983); *Burlington N. R. Co. v. Ragland*, 280 Ark. 182, 655 S.W.2d 437 (1983); *Ross v. Martin*, 800 F.2d 808 (8th Cir. 1986); *Ragland v. Gulf Oil Corp.*, 288 Ark. 182, 703 S.W.2d 449 (1986); *Pledger v. Featherlite Precast Corp.*, 308 Ark. 124, 823 S.W.2d 852 (1992); *Martin v. Couey Chrysler Plymouth, Inc.*, 308 Ark. 325, 824 S.W.2d 832 (1992); *Leathers v. A & B Dirt Movers, Inc.*, 311 Ark. 320, 844 S.W.2d 314 (1992); *Pledger v. Worthen Bank & Trust Co.*, 319 Ark. 155, 889 S.W.2d 732 (1994); *Arkansas Glass Container Corp. v. Pledger*, 320 Ark. 10, 894 S.W.2d 599 (1995); *Weiss v. Best Enters., Inc.*, 323 Ark. 712, 917 S.W.2d 543 (1996); *Boral Gypsum, Inc. v. Leathers*, 325 Ark. 272, 924 S.W.2d 805 (1996); *Baker Refrigeration Sys. v. Weiss*, 360 Ark. 388, 201 S.W.3d 900 (2005).

SUBCHAPTER 5 — LIABILITY AND PAYMENT

SECTION.

- 26-18-501. Liability for tax payment generally.
- 26-18-502. Transferee liability.
- 26-18-503. Remittance of taxes.
- 26-18-504. Final accounts of fiduciaries.
- 26-18-505. Extension of time for filing returns.

SECTION.

- 26-18-506. Preservation of records by taxpayers.
- 26-18-507. Claims for refunds of overpayments.
- 26-18-508. Interest on deficiencies and overpayments.

Cross References. Rules and regulations governing set-off of debts owed to the state, § 26-36-320.

Effective Dates. Acts 1981, No. 403, § 3: Jan. 1, 1982.

Acts 1983, No. 379, § 27: Dec. 31, 1982. Emergency clause provided: "It is hereby found and determined by the General As-

sembly that certain provisions of the State's income and estate tax laws that have counterparts in the Federal tax laws do not coincide with recent amendments and changes to the Federal tax laws; and that this Act is immediately necessary to make the Arkansas tax laws conform with the Federal tax laws to clarify any pos-

sible question of confusion caused by such differences. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect for all income years after, or estate tax return filing dates coming after, December 31, 1982.”

Acts 1989, No. 910, § 6: Mar. 23, 1989. Emergency clause provided: “It is hereby found and determined by the General Assembly that the estates of certain Arkansas citizens are in urgent need of being able to elect to defer the payment of their state estate tax for the same period of time and in the same manner now provided by 26 U.S.C. § 6166, for up to a fifteen (15) year period at a four percent (4%) interest rate; that the adoption of this act is designed to alleviate the need for forced sale of family farms and closely held family businesses for the purpose of paying state estate tax; and that there should be conformity on this issue between federal and state estate tax law, which conformity does not now exist. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval, and that the estates of any Arkansas citizens which are entitled to file a deferral election, pursuant to the provisions of 26 U.S.C. § 6166 of the federal tax laws, shall be entitled to have such federal election treated as a timely election to defer the payment of the proportionate part of the Arkansas state estate taxes for the same period of time.”

Acts 1991, No. 685, § 11: Jan. 1, 1991.

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 1139, § 14: July 1, 1997. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the taxpayers’ procedural rights to pursue an objective judicial review in challenging a state tax assessment are, in some instances, being unfairly denied to Arkansas taxpayers who have legitimate disputes with the Arkansas Department of Finance and Administration. It is therefore held that the provisions of this act, are needed to cure this problem for state taxpayers. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on and after July 1, 1997.”

Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Acts 2007, No. 369, § 4: effective for tax years beginning on or after January 1, 2007.

Acts 2011, No. 789, § 2: effective on or after Jan. 1, 2012.

RESEARCH REFERENCES

Am. Jur. 72 Am. Jur. 2d, State Tax., § 834 et seq.

C.J.S. 84 C.J.S., Tax., § 607 et seq.

26-18-501. Liability for tax payment generally.

(a) The liability for the payment of taxes imposed under any state tax law is on the taxpayer or person as identified by the particular state tax law.

(b) Any person required to collect, truthfully account for, and pay over any state tax who willfully fails to collect the tax, or truthfully

account and pay over the tax, or willfully attempts in any manner to evade or defeat any tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over.

(c) As used in this section, "person" includes an officer, director, or employee of a corporation, a partner or employee of a partnership, or a member, manager, or employee of a limited liability company, who, as an officer, director, employee, partner, member, or manager is under a duty to perform the act in respect to which the violation occurs.

(d) This section shall not apply to the payment of corporate income taxes.

History. Acts 1979, No. 401, § 7; A.S.A. 1947, § 84-4707; Acts 1995, No. 1160, § 24.

CASE NOTES

Cited: *Martin v. Couey Chrysler Plymouth, Inc.*, 308 Ark. 325, 824 S.W.2d 832 (1992).

26-18-502. Transferee liability.

(a) The liability, at law or in equity, of the transferee of property of any person liable for any tax imposed by a law of the State of Arkansas shall be the same as that of the transferor and may be assessed and collected from the transferee in the same manner and subject to the same provisions as the transferor.

(b) The period of limitation for assessment of any liability of a transferee or a fiduciary shall be within one (1) year after the expiration of the period of limitation for assessment against the transferor.

(c) As used in this section, unless the context otherwise requires, "transferee" includes the donee, heir, legatee, devisee, and distributee and, with respect to estate tax, also includes any person who is personally liable for any part of the tax.

History. Acts 1979, No. 401, § 42; A.S.A. 1947, § 84-4742.

26-18-503. Remittance of taxes.

(a) When a return of tax is required to be filed, the person required to make the return shall, without assessment or notice and demand from the director, pay the tax to the director at the time and place fixed for filing the return, determined without regard to any extension of time for filing the return.

(b) All remittances required to be paid under any state tax law shall be made payable to the Department of Finance and Administration by bank draft, check, cashier's check, money order, or money. The director

shall issue a receipt, if requested, to the taxpayer for every cash payment. No remittance, other than cash, is a final discharge of liability due the director until it has been paid in cash.

History. Acts 1979, No. 401, § 9; A.S.A. 1947, § 84-4709.

26-18-504. Final accounts of fiduciaries.

(a) No final account of any fiduciary shall be allowed by a probate division of circuit court of the state unless the account shows, and the probate division of circuit court finds, that all taxes imposed by any state tax law which are due have been paid and that all taxes which may become due are secured by bond, security deposit, or otherwise. To the extent that a tax certificate of the director shows payment, it shall be conclusive.

(b) For the purpose of facilitating the settlement and distribution of the estates held by fiduciaries, the director may agree upon the amount of taxes due, or to become due, from the fiduciaries under the provisions of any state tax law, and payment in accordance with the agreement shall be in full satisfaction of all taxes to which the agreement relates.

History. Acts 1979, No. 401, § 30; A.S.A. 1947, § 84-4730.

26-18-505. Extension of time for filing returns.

(a)(1) Upon written request and for good cause, the director may grant a reasonable extension of time to file any return required under any state tax law.

(2) The director shall keep a record of every extension granted with the reason the extension was granted.

(3) Except for a corporation income tax return as provided in § 26-51-807(c), the time for filing any return shall not be extended more than one hundred eighty (180) days.

(4) The director may promulgate regulations to grant automatic extensions of time to file income tax returns and information returns without the taxpayer being required to submit a written application for the extension of time to file.

(b) When an extension of time to file is granted, the taxpayer may file a tentative return on or before the original due date showing the estimated amount of tax due for the period covered by the return and may pay the estimated tax or the first installment at the same time.

(c)(1) No interest shall be accrued or assessed against any sums paid on or before the original due date.

(2) Any state tax not paid when due because the director granted an extension of time for payment shall bear interest at the rate of ten percent (10%) per annum from the date originally due until paid.

(d)(1) For purposes of granting an extension of time for filing a return under this section, "good cause" includes, but is not limited to:

(A) An instance in which the taxpayer is determined for federal tax purposes to be affected by a presidentially declared disaster under the provisions of 26 U.S.C. § 7508A, as in effect on January 1, 1999; and

(B) An instance in which the taxpayer is determined to be affected by a disaster emergency as declared by the Governor under § 12-75-107.

(2) In the event that an extension of time for filing a return is granted to a taxpayer affected by a presidentially declared disaster or a disaster emergency declared by the Governor, no interest or penalty shall accrue for the extension period granted by the director.

History. Acts 1979, No. 401, § 10; 685, § 8; 1999, No. 1126, § 4; 2005, No. 1981, No. 403, § 2; 1983, No. 379, § 22; 686, § 1; 2007, No. 369, § 1. A.S.A. 1947, § 84-4710; Acts 1991, No.

26-18-506. Preservation of records by taxpayers.

(a) It is the duty of every taxpayer required to make a return of any tax due under any state tax law to keep and preserve suitable records as are necessary to determine the amount of tax due or to prove the accuracy of any return.

(b) Unless otherwise provided by law, the taxpayer is required to keep and maintain all records within the State of Arkansas and for at least six (6) years after a return was filed. These records are subject to examination by the director at any reasonable time.

(c) When the records required by this section are kept outside the State of Arkansas in the usual course of business, they shall be produced within the state within fifteen (15) days after receipt of demand by the director. If the taxpayer determines it is impractical, then the taxpayer may request, and the director may grant, permission to have the records audited wherever they may be.

(d) When a taxpayer fails to preserve and maintain the records required by any state tax law, the director may, in his or her discretion, make an estimated assessment based upon information available to him or her as to the amount of tax due by the taxpayer. The burden of proof of refuting this estimated assessment is upon the taxpayer.

History. Acts 1979, No. 401, § 11; A.S.A. 1947, § 84-4711.

CASE NOTES

ANALYSIS

Burden of Proof.
Evidence.

Burden of Proof.

Where taxpayer's records showed transactions were leases but taxpayer did not

maintain the required records, the burden of refuting the assessment was upon the taxpayer. *Weiss v. Best Enters., Inc.*, 323 Ark. 712, 917 S.W.2d 543 (1996).

Evidence.

Evidence insufficient to refute the reasonableness of the estimated assess-

ments; however, evidence insufficient to support finding as to the amount of gross sales. *Jones v. Ragland*, 293 Ark. 320, 737 S.W.2d 641 (1987).

Absent adequate additional documentation or testimony from the parties involved, the gross receipts tax would be

levied against the taxpayer on transactions involving both sales and services and the taxpayer had the burden of refuting the reasonableness of the estimated tax assessments. *Leathers v. A & B Dirt Movers, Inc.*, 311 Ark. 320, 844 S.W.2d 314 (1992).

26-18-507. Claims for refunds of overpayments.

(a)(1) Any taxpayer who has paid any state tax to the State of Arkansas in excess of the state taxes lawfully due, subject to the requirements of this chapter, shall be refunded the overpayment of the state tax determined by the director to be erroneously paid upon the filing of an amended return or a verified claim for refund, subject to subsection (e) of this section.

(2) This subsection does not include an action based on Arkansas Constitution, Article 16, § 13.

(b) The claim shall specify:

- (1) The name of the taxpayer;
- (2) The time when and the period for which the state tax was paid;
- (3) The nature and kind of state tax paid;
- (4) The amount of the state tax that the taxpayer claimed was erroneously paid;
- (5) The grounds upon which a refund is claimed; and
- (6) Any other information relative to the payment as may be prescribed by the director.

(c) The director shall determine what amount of refund, if any, is due as soon as practicable after a claim has been filed, but in no event shall the taxpayer be entitled to file a suit for refund under § 26-18-406 until at least six (6) months have elapsed from the date of the filing of the claim for refund or the director has issued a notice of denial of a claim for refund.

(d) Notwithstanding any provisions of the law to the contrary, a taxpayer who acts only as an agent of the state in the collection of any state tax shall be entitled to claim a credit or refund of the state tax only if the taxpayer establishes that he or she has:

- (1) Borne the state tax in question;
- (2) Repaid the amount of the state tax to the person from whom he or she collected it; or
- (3) Obtained the consent of the person to the allowance of the credit or refund.

(e)(1)(A) The director shall make a written determination and give notice to the taxpayer concerning whether or not a refund is due.

(B)(i) If a refund is due, the director shall certify that the claim is to be paid to the taxpayer as provided by law or credited against state taxes due or to become due.

(ii)(a) If the director determines that the taxpayer entitled to the refund has an outstanding state tax delinquency for which a certificate of indebtedness has been filed, the director shall apply the

refund due as payment against the outstanding state tax delinquency. If the amount of the state tax refund exceeds the amount of the outstanding state tax delinquency, the excess amount shall be paid to the taxpayer in accordance with subdivision (e)(1)(B)(i) of this section.

(b) The director shall notify each taxpayer in writing whose refund results from the filing of a joint return that the joint refund will be applied against the outstanding state tax delinquency.

(c) A taxpayer who claims that only the taxpayer's spouse owes the delinquent state tax debt may seek administrative relief by filing a written protest under oath within thirty (30) days after the notice under subdivision (e)(1)(B)(ii)(b) is received that includes information regarding why the taxpayer does not owe the delinquent state tax debt and either requests a hearing in person or based upon the information submitted with the protest.

(d) A hearing on a written protest made under this subdivision (e)(1)(B)(ii) and any judicial relief requested following the administrative hearing process shall be provided in accordance with the applicable provisions of §§ 26-18-405 and 26-18-406.

(2)(A) If the director's determination is to disallow the claim for refund, in whole or in part, then the director shall immediately issue a written decision giving notice to the taxpayer of the denial of the claim for refund.

(B) The taxpayer may seek administrative review and relief from the director's decision to deny a claim for refund by protesting as provided in §§ 26-18-404 and 26-18-405.

(3) The taxpayer may seek judicial relief under the provisions of § 26-18-406 from:

(A) A notice of a denial of a claim for refund issued by the director; or

(B) The director's failure to issue a written decision after the claim for refund has been filed for six (6) months.

(f)(1) This section shall not apply to state taxes paid as a result of an audit or proposed assessment.

(2) State taxes paid as a result of an audit or proposed assessment may not be recovered unless § 26-18-406 applies.

History. Acts 1979, No. 401, § 26; 1983, No. 379, § 24; A.S.A. 1947, § 84-4726; Acts 1997, No. 1139, §§ 8, 9; 1999, No. 1277, §§ 7, 8; 1999, No. 1373, § 1; 2003, No. 1718, § 9; 2011, No. 789, § 1.

A.C.R.C. Notes. Acts 1997, No. 1139, § 10, provided: "The General Assembly intends, by the passage of this amendment to the provisions of the Arkansas Tax Procedure Act, to clarify its intent that taxpayers involved in state tax disputes with the Arkansas Department of Finance and Administration shall have, as much as possible, the opportunity to

secure an objective review of their dispute by a court at law through: (1) the posting of bond method; (2) the payment after assessment method; or (3) the claim for refund method, after the payment by the taxpayer of all state taxes claimed to be due from the taxpayer for at least one complete taxable period involved in the audit period. It is also intended by the General Assembly that the courts of this state are to recognize the 'divisible tax theory' applicable to the review of federal tax dispute by federal courts, as also being applicable to the review of state tax dis-

putes by the courts of this state.”

Amendments. The 2011 amendment added “subject to subsection (e) of this

section” at the end of (a)(1); and rewrote (e)(1)(B).

RESEARCH REFERENCES

ALR. Voluntary payment doctrine as bar to recovery of payment of generally unlawful tax. 1 A.L.R.6th 229.

Construction and operation of statutory time limit for filing claim for state tax refund. 14 A.L.R.6th 119.

Ark. L. Rev. Case Note, Pledger v. Illinois Tool Works, Inc.: Arkansas Belatedly Recognizes the Unitary Business

Principle as a Limitation of Its Power to Tax Capital Gains of Nondomiciliary Corporations, 45 Ark. L. Rev. 597.

Nichols, Civil Procedure — The End of the Class Action in Multi-Taxpayer Litigation Seeking Refunds of State Taxes, ACW Inc. v. Weiss, 29 Ark. 302, 947 S.W.2d 770 (1997), 21 UALR L.R. 151.

CASE NOTES

ANALYSIS

Applicability.

Class Action.

Applicability.

This section deals with a taxpayer's overpayment through “error of fact, computation, or mistake of law,” and does not apply to payment made under protest. *Taber v. Pledger*, 302 Ark. 484, 791 S.W.2d 361 (Ark. 1990).

Where a taxpayer challenges a tax statute as patently unconstitutional, rather than unconstitutional in its application, she is not required to file a refund claim for the State to waive sovereign immunity. *Carson v. Weiss*, 333 Ark. 561, 972 S.W.2d 933 (1998), appeal dismissed, sub nom. *Fisher v. Chavers*, 351 Ark. 318, 92 S.W.3d 30 (2002).

Where a taxpayer did not appeal a final assessment, but instead filed a verified claim for refund and for abatement, the suit was not timely; further, the plain language demonstrated that this section applied only to those cases where a taxpayer had erroneously or mistakenly overpaid taxes, and not where a taxpayer paid

the amount assessed deliberately in order to challenge a final assessment of additional taxes following an audit. *Baker Refrigeration Sys. v. Weiss*, 360 Ark. 388, 201 S.W.3d 900 (2005).

Class Action.

There must be full compliance with subdivision (e)(2)(A) before sovereign immunity is waived; therefore, where only one taxpayer has claimed a refund, no taxpayer class action can be certified. *State, Dep't of Fin. & Admin. v. Staton*, 325 Ark. 341, 942 S.W.2d 804 (1996); *State, Dep't of Fin. & Admin. v. Tedder*, 326 Ark. 495, 932 S.W.2d 755 (1996).

In action by taxpayers for refunds, chancellor lacked authority to certify as members of class taxpayers who had not filed refund claims, because sovereign immunity was waived only for plaintiffs who had followed the procedure outlined in this section. *ACW, Inc. v. Weiss*, 329 Ark. 302, 947 S.W.2d 770 (1997).

Cited: *Pledger v. Ethyl Corp.*, 299 Ark. 100, 771 S.W.2d 24 (1989); *Pledger v. Bosnick*, 306 Ark. 45, 811 S.W.2d 286 (1991); *Baker Refrigeration Sys. v. Weiss*, 360 Ark. 388, 201 S.W.3d 900 (2005).

26-18-508. Interest on deficiencies and overpayments.

Interest shall be collected on tax deficiencies and paid on overpayments as follows:

(1) A tax levied under any state tax law which is not paid when due is delinquent. Interest at the rate of ten percent (10%) per annum shall be collected on the total tax deficiency from the date the return for the tax was due to be filed until the date of payment;

(2) Interest on a tax deficiency shall be assessed at the same time as the tax deficiency. The tax deficiency together with the interest shall be paid upon notice and demand by the director;

(3) When any overpayment has been made by a taxpayer, the overpayment shall be refunded together with interest at the rate of ten percent (10%) per annum;

(4) Interest on overpayments shall be paid from the date the return for the tax was due to be filed or the date the return is filed, whichever occurs later, until a date, to be determined by the director, preceding the date of the refund warrant by not more than thirty (30) days, whether or not the warrant is accepted by the taxpayer;

(5) No interest shall be allowed on an overpayment of tax that is refunded by the director within ninety (90) days after the last date provided for filing the return for the tax including any extension of time for filing the return, or ninety (90) days after the date the return is filed, whichever occurs later; and

(6)(A) In lieu of the amount of interest otherwise provided by this section, when an election to defer the payment of estate tax is made pursuant to the provisions of § 26-59-113(c), then the amount of interest on the deferred portion of the estate tax qualifying for the election shall be at the rate of four percent (4%) per annum on the balance of the payments due under the installment deferral election.

(B) However, the four percent (4%) interest rate shall only apply to the “4-percent portion” as that term is defined in 26 U.S.C. § 6601(j)(2), as it existed on January 1, 1989.

(C) The interest rate on the estate tax exceeding the “4-percent portion” shall be at the rate specified in subdivision (1) of this section.

History. Acts 1979, No. 401, § 8; 1983, No. 379, § 21; A.S.A. 1947, § 84-4708; Acts 1989, No. 910, § 3; 2005, No. 262, § 1; 2007, No. 827, § 197.

A.C.R.C. Notes. Acts 1989, No. 910, § 1, provided: “It is hereby found and determined that it has been the policy of the General Assembly to attempt to conform federal and Arkansas tax laws, as much as possible, so as to eliminate confusion and complexity in the administration of Arkansas state tax laws, and to provide Arkansas citizens with the same treatment for state taxes as they receive for federal taxes. Federal tax law now provides a special installment deferral for the payment of federal estate taxes for certain qualifying assets (generally family farms and closely held businesses) of a decedent’s estate that are inherited by the members of the decedent’s family. This

special installment deferral provision, of up to fifteen (15) years at a four percent (4%) interest rate, has been enacted by Congress to encourage the continued ownership of family farms and closely held family businesses, rather than forcing the sale or heavy mortgaging of the assets of such businesses to immediately pay estate taxes. Arkansas estate tax law does not now contain similar provisions. Arkansas law now requires a much quicker payment of Arkansas estate taxes on assets of a decedent’s estate comprising family farms and closely held family businesses. The General Assembly finds and determines that the estates of Arkansas decedents that are entitled to claim the special deferral payment of federal estate taxes, at a four percent (4%) interest rate, should also be entitled to those same privileges for the payment of Arkansas Estate Tax.”

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Tyler, Survey of Business Law, 3 U. Ark. Little Rock L.J. 149.

Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

SUBCHAPTER 6 — LICENSES, PERMITS, AND REGISTRATIONS

SECTION.
26-18-601. Cancellation or refusal of license or permit.

SECTION.
26-18-602. Judicial review of cancellation decision.

26-18-601. Cancellation or refusal of license or permit.

(a) The director may cancel or refuse to issue, extend, or reinstate any license, permit, or registration under any state tax law to any person or taxpayer who has within the last three (3) years:

(1) Failed to observe or fulfill the conditions upon which the license or permit was issued; or

(2) Failed to pay any delinquent tax or penalty.

(b)(1) When the director determines, in his or her sole discretion, that an emergency situation exists and that the public welfare and safety are endangered, he or she may issue an order temporarily suspending a license, permit, or registration pending a hearing before him or her on the subject of the cancellation of the license, permit, or registration.

(2) The director shall give notice of the temporary suspension at the same time that he or she gives notice of his or her intention to cancel or to refuse to issue, extend, or reinstate any license, permit, or duplicate copy thereof, as provided by this section.

(3) The director shall as soon as practicable, but in any event within three (3) days after the request of the taxpayer, hold a hearing on whether the temporary suspension should be made permanent.

(4) The temporary suspension shall be made permanent without a hearing unless the taxpayer requests a hearing within twenty (20) days of receipt of notice of the temporary suspension.

(c) Except as set out in subsection (b) of this section, before the director may cancel or refuse to issue, extend, or reinstate any license, permit, or registration, he or she shall give notice of his or her proposed action, and the owner or applicant shall have twenty (20) days after receipt of the director's decision to request a hearing.

(d)(1) When a license, permit, or registration is cancelled by the director, all accrued fees, taxes, and penalties, even though not due and payable at the time of cancellation under the state tax law imposing and levying the tax, shall become due concurrently with the cancellation of the license, permit, or registration.

(2) The licensee or permittee shall within five (5) business days of cancellation make a report to the director covering the period not previously covered by reports filed by that person and ending with the date of the cancellation and shall pay all accrued fees, taxes, and penalties at the time the report is made.

(3) Violation of this subsection is a Class C misdemeanor.

(e)(1) The affected taxpayer may seek relief from the decision of the director cancelling a license, permit, or registration by requesting a hearing, pursuant to subsections (b) and (c) of this section, by filing a written protest of the action with the hearing officer appointed by the director, pursuant to § 26-18-405, and the hearing officer shall hold all hearings requested pursuant to this section.

(2) The hearing officer shall issue a written decision on all hearings which shall be final unless revised by the director.

(3) The hearings and determinations of the hearing officer shall not be subject to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(4)(A) A taxpayer may request a revision by the director of the hearing officer's determination which is adverse to him or her within twenty (20) days of the date of the mailing of the hearing officer's decision.

(B) If the director refuses to make a revision, or if the taxpayer does not request a revision, then the affected taxpayer may seek relief from the hearing officer's decision or the final revision determination by the director by following the method provided in § 26-18-602.

(f) Violations of this section shall be punished as provided in § 26-18-206. The director may seek to enjoin any violation of any state tax law the director is charged to enforce.

History. Acts 1979, No. 401, § 16; 1983, No. 379, § 23; A.S.A. 1947, § 84-4716.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Tyler, Survey of Business Law, 3 U. Ark. Little Rock L.J. 149.

26-18-602. Judicial review of cancellation decision.

(a)(1) The affected taxpayer may seek relief from the decision of the director, rendered after a hearing, cancelling a license, permit, or registration.

(2) The taxpayer's petition seeking an order to stay the effect of the director's decision shall be filed within thirty (30) days after receipt of notice of that decision by the taxpayer with the Pulaski County Circuit Court or the circuit court of the county in which the taxpayer resides or has his or her principal place of business, where the matter shall be tried de novo.

(b)(1) Relief from the decision of the director cancelling a license, permit, or registration may be taken only as provided in this section.

(2)(A) To stay the effect of the director's decision, the person or taxpayer shall file a bond not to exceed twenty-five thousand dollars

(\$25,000) with and in an amount fixed by the director, payable to the State of Arkansas.

(B) The bond shall be conditioned upon:

(i) The faithful and diligent prosecution of the appeal by the taxpayer to a final determination; and

(ii) The immediate compliance of the taxpayer with the director's decision if the director's decision is not enjoined by the circuit court or upon appeal is upheld by the Supreme Court.

(3) The director may, in his or her discretion, refuse to stay the effect of his or her decision and permit a bond to be posted when he or she determines in his or her sole discretion that the public safety and welfare would be endangered by the stay.

(c) The venue for all actions seeking relief from a decision of the director concerning the cancellation of or refusal of the issuance of a license or permit shall be the Pulaski County Circuit Court or the circuit court of the county in which the taxpayer resides or has his or her principal place of business.

History. Acts 1979, No. 401, § 17;
A.S.A. 1947, § 84-4717.

SUBCHAPTER 7 — ENFORCEMENT

SECTION.

- 26-18-701. Issuance of certificates of indebtedness and execution.
26-18-702. Injunction proceedings.
26-18-703. Appointment of receivers.
26-18-704. Proceedings against localities.

SECTION.

- 26-18-705. Settlement or compromise of liability controversies.
26-18-706. Release of property from lien.
26-18-707. Extension of comity.
26-18-708. Spousal relief.

Cross References. Collection and enforcement generally, § 26-34-101 et seq.

RESEARCH REFERENCES

- Am. Jur.** 72 Am. Jur. 2d, State Tax., § 866 et seq.
C.J.S. 84 C.J.S., Tax., § 640 et seq.
U. Ark. Little Rock L.J. Stafford,

- Separation of Powers and Arkansas Administrative Agencies: Distinguishing Judicial Power and Legislative Power, 7 U. Ark. Little Rock L.J. 279.

26-18-701. Issuance of certificates of indebtedness and execution.

(a)(1)(A) If a taxpayer does not timely and properly pursue his or her remedies seeking relief from a decision of the Director of the Department of Finance and Administration and a final assessment is made against the taxpayer, or if the taxpayer fails to pay the deficiency assessed upon notice and demand, then the director shall, as soon as

practicable thereafter, issue to the circuit clerk of any county of the state a certificate of indebtedness certifying that the person named in the certificate of indebtedness is indebted to the state for the amount of the tax established by the director as due.

(B)(i) If a taxpayer has a delinquent tax liability to the State of Arkansas of less than one thousand dollars (\$1,000), the director may enter into an agreement with the taxpayer to allow the taxpayer to pay the delinquency in installments.

(ii) The director may choose not to issue a certificate of indebtedness during the period of the installment agreement if he or she determines that it is in the best interest of the state.

(2) The circuit clerk shall enter immediately upon the circuit court judgment docket:

(A) The name of the delinquent taxpayer;

(B) The amount certified as being due;

(C) The name of the tax; and

(D) The date of entry upon the judgment docket.

(3)(A)(i) The entry of the certificate of indebtedness shall have the same force and effect as the entry of a judgment rendered by the circuit court.

(ii) This entry shall constitute the state's lien upon the title of any real and personal property of the taxpayer in the county where the certificate of indebtedness is recorded.

(B) This lien is:

(i) In addition to any other lien existing in favor of the state to secure payment of taxes, applicable interest, penalties, and costs, including any costs the circuit clerk is entitled to receive as provided by law for either the filing or the release of this lien; and

(ii) Superior to:

(a) Other liens of any type or character attaching to the property after the date of entry of the certificate of indebtedness on the judgment docket; and

(b) All claims of unsecured creditors.

(C)(i) The certificate of indebtedness authorized by this subsection shall continue in force for ten (10) years from the date of recording and shall automatically expire after the ten-year period has run.

(ii) An action on the lien on the certificate of indebtedness shall be commenced within ten (10) years after the date of recording of the certificate, and not afterward.

(iii) The director shall not be required to file a release on a lien which has expired and the provisions of § 26-18-808 dealing with failure to release liens are not applicable to this section.

(iv) The provisions of this subsection are applicable to both liens already on file and all future filings of liens.

(b)(1) After entry of the certificate of indebtedness, the circuit clerk shall issue a writ of execution directed to the director, authorizing the director to levy upon and against all real and personal property of the taxpayer.

(2) The director shall have all remedies and may take all proceedings for the collection of the tax which may be taken for the recovery of a judgment at law.

(3) The writ of execution shall be issued, served, and executed in the same manner as provided for in the issuance and service of executions rendered by the circuit courts of this state, except the director shall act in the place of the county sheriffs.

(4) The director shall have this authority for all liens either presently filed or filed after the passage of this act.

(c)(1) Nothing in this chapter shall preclude the director from resorting to any other means provided by law for collecting delinquent taxes.

(2) The issuance of a certificate of indebtedness, entry by the circuit clerk, and levy of execution as provided in this section shall not constitute an election of remedies with respect to the collection of the tax.

(3) The taxes, interest, penalties, and fees, including any costs the circuit clerk is entitled to receive as provided by law in these matters, imposed or levied by any state tax law, when due, may be collected in the same way as a personal debt of the taxpayer.

(4) In the name of the state, the director may sue to the same effect and extent as for the enforcement of a right of action for debt.

(5) All provisional remedies available in these actions are available to the State of Arkansas in the enforcement of the payment of any state tax.

(d)(1)(A) In addition to the remedies provided in subsections (b) and (c) of this section, the director may direct the circuit clerk to issue a writ of execution directed to the county sheriff of any county authorizing the county sheriff to levy upon and against all real and personal property of the taxpayer.

(B) The writ of execution shall be issued, served, and executed in the same manner as provided for in the issuance and service of executions rendered by the circuit courts of this state.

(2)(A) The circuit clerk and county sheriff shall be entitled to receive the same fees provided by law in these matters.

(B) These fees shall be collected from the taxpayer by either the director or the county sheriff in addition to the tax, penalties, and interest included in the certificate of indebtedness.

(C) If the county sheriff is unable after diligent effort to collect the tax, interest, penalties, and costs, the director may pay such fees as are properly shown to be due to the circuit clerk and county sheriff.

(e) The director may contract with persons inside or outside the state to help the director collect delinquencies of resident or nonresident taxpayers.

History. Acts 1979, No. 401, § 23; A.S.A. 1947, § 84-4723; Acts 1989, No. 590, § 3; 1993, No. 1236, § 1; 2003, No. 1085, §§ 1, 2.

Publisher's Notes. In reference to the term "date of passage of this act," Acts 1979, No. 401 was signed by the Governor on March 14, 1979, and became effective

on January 1, 1980.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Annual Survey of Caselaw: Tax Law, 27 U. Ark. Little Rock L. Rev. 751.

CASE NOTES

ANALYSIS

Assessments.
Authority to Sue.
Corporations.
Filing of Lien.
Judgments.

Assessments.

When person paid taxes on yearly assessment made on property, state could not recover further taxes where merely a mistake had been made in assessing the property too low, and a review by courts was permitted only when assessors proceeded on wrong basis of valuation in omitting some property or element of value or in adopting wrong basis of estimating value. State ex rel. Norwood v. Kansas City & M. Ry. & Bridge Co., 106 Ark. 248, 153 S.W. 614 (1913) (decision under prior law).

Authority to Sue.

Former statute that authorized tax commission to "direct" and "approve" suits against corporations for collection of back taxes was repealed by implication by so much of a subsequent statute as authorized the attorney general to bring action therefor. State ex rel. Attorney Gen. v. Standard Oil Co., 179 Ark. 280, 16 S.W.2d 581 (1929) (decision under prior law).

Demurrer to complaint should have been sustained where complaint did not contain allegation that attorney general had been directed by tax commission to bring suit. State ex rel. Att'y Gen. v. Republic Mining & Mfg. Co., 185 Ark. 1119, 52 S.W.2d 43 (1932) (decision under prior law).

Former statute authorizing the attorney general to bring suits to recover overdue taxes due from corporations had been impliedly repealed as to delinquent severance taxes, the collection of which was conferred on the commissioner of rev-

enues by Acts 1933, No. 82 (superseded by § 26-17-304), and Acts 1935, No. 131 (repealed). Wiseman v. Arkansas-Louisiana Pipe Line Co., 191 Ark. 195, 85 S.W.2d 703 (Ark. 1935) (decision under prior law).

Corporations.

Former statute gave state right to recover back taxes on a corporation's personal property by personal judgment against the corporation which owned it at the time it was either omitted from taxation or was grossly undervalued, and where it had gone into the hands of a subsequent purchaser, the purchaser could be made a party and the state's lien enforced. State ex rel. Attorney Gen. v. Chicago Mill & Lumber Corp., 184 Ark. 1011, 45 S.W.2d 26 (1931) (decision under prior law).

A personal judgment could not be rendered against a corporation for back taxes due on property during the period another corporation had owned it, though both corporations had the same stockholders and directors. State ex rel. Attorney Gen. v. Chicago Mill & Lumber Corp., 184 Ark. 1011, 45 S.W.2d 26 (1931) (decision under prior law).

A foreign corporation doing business in state could be sued in the county of its principal office for back taxes on property during the years it owned the property. State ex rel. Attorney Gen. v. Chicago Mill & Lumber Corp., 184 Ark. 1011, 45 S.W.2d 26 (1931) (decision under prior law).

A foreign corporation which had withdrawn from state and was not doing business in state could not be sued for back taxes. State ex rel. Attorney Gen. v. Chicago Mill & Lumber Corp., 184 Ark. 1011, 45 S.W.2d 26 (1931) (decision under prior law).

Filing of Lien.

Because 11 U.S.C.S. § 522(c)(2)(B) applied only to a properly filed lien, and

because the creditor state taxing authority had filed its lien in the wrong county, the lien did not attach to the debtor's property under subdivision (a)(3)(A) of this section, and thus, was avoidable in the debtor's bankruptcy under 11 U.S.C.S. § 506(d) as an unsecured lien. *Roper v. Barclay*, 286 B.R. 693 (Bankr. E.D. Ark. Oct. 19, 2002), *aff'd*, 294 B.R. 301 (B.A.P. 8th Cir. 2003).

Judgments.

Former statute authorized a personal judgment when property was of such a

character that payment could not otherwise be enforced; however, where only land was involved, court was merely authorized to find in decree the amount of taxes due and declare the amount to be a lien on the lands and order each tract sold for back taxes unless paid within three months after decree. *White River Lumber Co. v. State*, 175 Ark. 956, 2 S.W.2d 25 (1928), *aff'd*, 279 U.S. 692, 49 S. Ct. 457 (1929) (decision under prior law).

Cited: *Martin v. Couey Chrysler Plymouth, Inc.*, 308 Ark. 325, 824 S.W.2d 832 (1992).

26-18-702. Injunction proceedings.

(a) When a return required under any state tax law has not been filed or does not furnish all the information required by the director or when the taxes imposed by any state tax law have not been paid or when any required license or permit has not been secured, the director, in the name of the State of Arkansas, may institute any necessary action or proceeding in the Pulaski County Circuit Court to enjoin the person or taxpayer from continuing operations until the report or return has been filed, required licenses or permits secured, or taxes paid as required.

(b) The injunction shall be issued without a bond being required from the state.

History. Acts 1979, No. 401, § 28; A.S.A. 1947, § 84-4728.

26-18-703. Appointment of receivers.

At the director's request, the court shall appoint a receiver to manage the property of the taxpayer upon a proper showing by the director that the claim of the state of any state tax is in danger of being lost or rendered uncollectible because of mismanagement, dissipation, or concealment of the property by the taxpayer.

History. Acts 1979, No. 401, § 28; A.S.A. 1947, § 84-4728.

26-18-704. Proceedings against localities.

When a county, city, town, or other political subdivision of the state fails or refuses to pay any tax due under any state tax law, the procedure for collecting the tax shall be the same as for any other taxpayer.

History. Acts 1979, No. 401, § 29; A.S.A. 1947, § 84-4729.

26-18-705. Settlement or compromise of liability controversies.

(a) The Director of the Department of Finance and Administration may enter into an agreement to compound, settle, or compromise any controversy relating to a state tax or any admitted or established tax liability as to any tax collectible under any state law when:

- (1) The controversy is over the amount of tax due; or
- (2) The inability to pay results from the insolvency of the taxpayer.

(b) The director may waive or remit the interest or penalty, or any portion of the interest or penalty, ordinarily accruing because of a taxpayer's failure to pay a state tax within the statutory period allowed for its payment:

(1) If the taxpayer's failure to pay the tax is satisfactorily explained to the director;

(2) If the failure results from a mistake by the taxpayer of either the law or the facts subjecting him or her to such tax; or

(3) If the inability to pay the interest or penalty results from the insolvency or bankruptcy of the taxpayer.

(c)(1) In settling or compromising any controversy relating to the liability of a person for any state tax for any taxable period, the director may enter into a written closing agreement concerning the liability.

(2) When the closing agreement is signed by the director, it shall be final and conclusive, and except upon a showing of fraud or misrepresentation of a material fact, no additional assessment or collection shall be made by the director, and the taxpayer shall not institute any judicial proceeding to recover such liabilities as agreed to in the closing agreement.

(d) The director shall promulgate rules and regulations establishing guidelines for determining whether a proposed offer in compromise is adequate and is acceptable to resolve a tax dispute.

History. Acts 1979, No. 401, § 24;
A.S.A. 1947, § 84-4724; Acts 1999, No.
1126, § 5.

26-18-706. Release of property from lien.

(a) Upon written application by any person, the director may release affected property from the lien imposed by any assessment, order, judgment, or certificate of indebtedness obtained by or from any levy made by the director if:

(1) Either full payment is made to the director of the sum he or she considers adequate consideration for the release, including any costs the circuit clerk is entitled to receive as provided by law in these matters; or

(2) Adequate security deposit is made with the director to secure the payment of the debt evidenced by the lien, including any costs the circuit clerk is entitled to receive as provided by law in these matters.

(b) When the director determines that his or her assessment, certificate of indebtedness, or judgment is clouding the title of property

because of an error in the description of properties or similarity in names, the director may issue a release without the payment of any consideration or any costs the circuit clerk is entitled to receive, as provided by law in these matters.

(c) The director's release shall be given under his or her seal and filed in the office of the circuit clerk in the county in which the lien is filed, or it shall be recorded in any office in which conveyances of real estate may be recorded.

History. Acts 1979, No. 401, § 25; A.S.A. 1947, § 84-4725; Acts 2003, No. 1085, § 3.

26-18-707. Extension of comity.

The courts of this state shall recognize and enforce liability for taxes lawfully imposed by other states which extend a like comity to this state.

History. Acts 1979, No. 401, § 31; A.S.A. 1947, § 84-4731.

26-18-708. Spousal relief.

(a) If a return required under any state tax law has been filed by a husband and wife and the amount of tax due on the return was understated by either the omission of an amount properly includable in the return or by erroneous deductions or credits attributable to one (1) spouse, upon written request, the director may relieve the other spouse of liability for any tax, penalty, or interest attributable to the understatement of tax for that return.

(b) In determining whether to grant the relief set out in subsection (a) of this section, the director may take into consideration the following factors:

(1) Whether the spouse making the request for relief has significantly benefited, either directly or indirectly, from the understatement of tax;

(2) Whether the spouse making the request for relief knew or had reason to know of the understatement of tax; and

(3) Any other fact or circumstance that would make it inequitable to hold the spouse making the request for relief liable for the deficiency resulting from the understatement of tax.

(c) As used in subdivision (b)(2) of this section, "reason to know" means whether a reasonably prudent person would have known that an understatement was made.

(d) As used in subsection (a) of this section, "attributable to one (1) spouse" means that the understatement on the return was the result of the actions taken or information supplied by that spouse.

History. Acts 1999, No. 1126, § 6.

SUBCHAPTER 8 — TAXPAYER BILL OF RIGHTS

SECTION.

- 26-18-801. Title.
26-18-802. Disclosure of rights of taxpayer.
26-18-803. Procedures involving taxpayer interviews.
26-18-804. Abatement of penalty or addition to tax due to erroneous written advice by director — Limitations.
26-18-805. Basis for evaluation of employees.
26-18-806. Content of tax due, deficiency, and other notices.
26-18-807. Agreements for payment of tax liability in installments.

SECTION.

- 26-18-808. Civil damages for failure to release lien.
26-18-809. Civil damages for certain unauthorized collection actions.
26-18-810. Disclosure or use of information by preparers of returns.
26-18-811. Administrative appeal of liens.
26-18-812. Regulations.

Cross References. Arkansas Property Taxpayer Bill of Rights, § 26-23-201 et seq.

Effective Dates. Acts 1989, No. 590,

§ 2 provided that §§ 26-18-801 — 26-18-812 shall be effective for income years beginning on or after January 1, 1989.

RESEARCH REFERENCES

ALR. Standing of one taxpayer to complain of underassessment or nonassessment of property of another for state and local taxation. 9 A.L.R.4th 428.

Propriety of class action in state courts to recover taxes. 10 A.L.R.4th 655.

Estoppel of state or local government in tax matters. 21 A.L.R.4th 573.

Recovery of tax paid on exempt property. 25 A.L.R.4th 186.

What constitutes personal matters exempt from disclosure by invasion of privacy exemption under state Freedom of Information Act. 26 A.L.R.4th 666.

Allowance of attorneys' fees in mandamus proceedings. 34 A.L.R.4th 457.

Validity, construction and application of state laws imposing tax or license fee on possession, sale, or the like, of illegal narcotics. 12 A.L.R.5th 89.

CASE NOTES

Cited: Hercules, Inc. v. Pledger, 319 Ark. 702, 894 S.W.2d 576 (1995).

26-18-801. Title.

This subchapter may be cited as the "Taxpayer Bill of Rights".

History. Acts 1989, No. 590, § 1.

26-18-802. Disclosure of rights of taxpayer.

(a) The director shall, as soon as practicable, but not later than one hundred eighty (180) days after July 3, 1989, prepare a statement which sets forth in simple and nontechnical terms:

(1) The rights of a taxpayer and the obligations of the director during an audit;

(2) The procedure by which a taxpayer may appeal any adverse decision of the director, including administrative and judicial appeals;

(3) The procedures for prosecuting refund claims and for filing of taxpayer complaints; and

(4) The procedures which the director may use in enforcing the state's revenue laws, including assessment, estimated assessment, jeopardy assessment, and the filing and enforcement of liens.

(b) The statement prepared in accordance with subsection (a) of this section shall be distributed by the director to a taxpayer:

(1) When a proposed assessment of any state tax is made against the taxpayer or when the taxpayer is contacted by the director for an examination of the taxpayer's records, whichever is earlier;

(2) When requested by the taxpayer; and

(3) At any time the director deems it appropriate.

(c) The director shall take such actions as the director deems necessary to ensure that such distribution does not result in multiple statements being sent to any one (1) taxpayer.

History. Acts 1989, No. 590, § 1.

CASE NOTES**Penalty.**

This section has no sanctions or penalties provided for when the Department of Finance & Administration fails to prepare

and distribute taxpayer statements on the various matters provided in this section. *Hercules, Inc. v. Pledger*, 319 Ark. 702, 894 S.W.2d 576 (1995).

26-18-803. Procedures involving taxpayer interviews.

(a) **RECORDING OF INTERVIEWS.**

(1) **RECORDING BY TAXPAYER.** Any agent of the director in connection with any in-person interview with any taxpayer relating to the determination or collection of any tax shall, upon advance request of such taxpayer, allow the taxpayer to make an audio recording of such interview at the taxpayer's expense and with the taxpayer's equipment.

(2) **RECORDING BY DIRECTOR.** An agent of the director may make an audio recording of any interview described in subdivision (a)(1) of this section if such agent:

(A) Informs the taxpayer of such recording prior to the interview; and

(B) Upon request of the taxpayer, provides the taxpayer with a copy of such recording, but only if the taxpayer provides reimbursement for the cost of the reproduction of such copy.

(b) SAFEGUARDS.

(1) EXPLANATIONS OF PROCESSES. An agent of the director, before or at an initial interview, shall provide to the taxpayer:

(A) In the case of an in-person interview with the taxpayer relating to the determination of any tax, an explanation of the audit process and the taxpayer's rights under such process; or

(B) In the case of an in-person interview with the taxpayer relating to the collection of any tax, an explanation of the collection process and the taxpayer's rights under such process.

(2) RIGHT OF CONSULTATION. If the taxpayer clearly states to an agent of the director at any time during any interview, other than during an interview initiated by an administrative summons issued under § 26-18-305, that the taxpayer wishes to consult with an attorney, certified public accountant, or any other person permitted to represent the taxpayer before the director, then such agent shall suspend such interview regardless of whether the taxpayer may have answered one (1) or more questions. However, the taxpayer may be requested to sign a waiver extending the time the director has for making a final assessment as provided by § 26-18-401. If the taxpayer refuses to sign such a waiver, the taxpayer may be subject to an estimated assessment by the director.

(c) REPRESENTATIVES HOLDING POWER OF ATTORNEY.

(1) Any attorney, certified public accountant, or any other person, permitted to represent the taxpayer before the director who is not disbarred or suspended from practice may be authorized by such taxpayer to represent the taxpayer in any interview described in subsection (a) of this section.

(2) An agent of the director may not require a taxpayer to accompany the representative in the absence of an administrative summons issued to the taxpayer under § 26-18-305.

(3) Such agent, with the consent of the immediate supervisor of such agent, may notify the taxpayer directly that such agent believes such representative is responsible for unreasonable delay or hindrance of an examination or investigation of the taxpayer.

(d) SECTION NOT TO APPLY TO CERTAIN INVESTIGATIONS. This section shall not apply to criminal investigations or investigations relating to the integrity of any agent of the director.

History. Acts 1989, No. 590, § 1.

26-18-804. Abatement of penalty or addition to tax due to erroneous written advice by director — Limitations.

(a) IN GENERAL. The director shall abate any portion of any penalty or addition to tax attributable to erroneous advice furnished to the taxpayer in writing by an agent of the director acting in such agent's official capacity.

(b) LIMITATIONS. The provisions of subsection (a) of this section shall apply only if:

- (1) The written advice was reasonably relied upon by the taxpayer and was in response to a specific written request of the taxpayer; and
- (2) The portion of the penalty or addition to tax did not result from a failure by the taxpayer to provide adequate or accurate information.

History. Acts 1989, No. 590, § 1.

26-18-805. Basis for evaluation of employees.

The director shall not use records of tax collection results to:

- (1) Evaluate employees directly involved in collection activities, and their immediate supervisors; or
- (2) Impose or suggest production quotas or goals with respect to employees directly involved in collection activities, and their immediate supervisors.

History. Acts 1989, No. 590, § 1.

26-18-806. Content of tax due, deficiency, and other notices.

(a) **GENERAL RULE.**

(1) Any notice to which this section applies shall describe the basis for, and identify the amounts, if any, of, the tax due, interest, additional amounts, additions to the tax, and assessable penalties included in such notice.

(2) An inadequate description under this subsection shall not invalidate such notice.

(b) **NOTICE TO WHICH SECTION APPLIES.** This section shall apply to:

- (1) Any notice to be given by the director described in § 26-18-307;
- (2) Any notice generated out of any information return matching program; and
- (3) The first letter of the proposed deficiency which allows the taxpayer an opportunity for administrative review under this chapter.

History. Acts 1989, No. 590, § 1.

26-18-807. Agreements for payment of tax liability in installments.

(a) **AUTHORIZATION OF AGREEMENTS.** The director is authorized to enter into written agreements with any taxpayer under which such taxpayer is allowed to satisfy liability for payment of any tax in installment payments, if the director determines that such agreement will facilitate collection of such liability.

(b) **EXTENT TO WHICH AGREEMENTS REMAIN IN EFFECT.**

(1) **IN GENERAL.** Except as otherwise provided in this subsection, any agreement entered into by the director under subsection (a) of this section shall remain in effect for the term of the agreement.

(2) **INADEQUATE INFORMATION OR JEOPARDY.** The director may terminate any agreement entered into by the director under subsection (a) of this section if the following conditions apply:

(A) Information that the taxpayer provided to the director prior to the date such agreement was entered into was inaccurate or incomplete; or

(B) The director believes that collection of any tax to which an agreement under this section relates is in jeopardy.

(3) SUBSEQUENT CHANGE IN FINANCIAL CONDITIONS.

(A) IN GENERAL. If the director makes a determination that the financial condition of a taxpayer with whom the director has entered into an agreement under subsection (a) of this section has significantly changed, the director may alter, modify, or terminate such agreement.

(B) NOTICE. Action may be taken by the director under subdivision b)(3)(A) of this section only if:

(i) Notice of such determination is provided to the taxpayer no later than thirty (30) days prior to the date of such action; and

(ii) Such notice includes the reasons why the director believes a significant change in the financial condition of the taxpayer has occurred.

(4) FAILURE TO PAY AN INSTALLMENT OR ANY OTHER TAX LIABILITY WHEN DUE OR TO PROVIDE REQUESTED FINANCIAL INFORMATION. The director may alter, modify, or terminate an agreement entered into by the director under subsection (a) of this section in the case of the failure of the taxpayer to:

(A) Pay any installment at the time such installment payment is due under such agreement;

(B) Pay any other tax liability at the time such liability is due; or

(C) Provide a financial condition update as requested by the director.

History. Acts 1989, No. 590, § 1.

26-18-808. Civil damages for failure to release lien.

(a) IN GENERAL. If any employee of the director knowingly, or by reason of negligence, fails to release a lien under § 26-18-706 or § 26-18-811 on property of the taxpayer, such taxpayer may bring a civil action for damages against the director in court.

(b) DAMAGES. In any action brought under subsection (a) of this section, upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of the following:

(1) Actual, direct, economic damages sustained by the plaintiff which, but for the action of the defendant, would not have been sustained; plus

(2) The costs of the action.

(c) LIMITATIONS.

(1) REQUIREMENT THAT ADMINISTRATIVE REMEDIES BE EXHAUSTED. A judgment for damages shall not be awarded under subsection (b) of this section, unless the court determines that the plaintiff has exhausted

the administrative remedies available to such plaintiff within the Revenue Division of the Department of Finance and Administration.

(2) **MITIGATION OF DAMAGES.** The amount of damages awarded under subdivision (b)(1) of this section shall be reduced by the amount of such damages which could have reasonably been mitigated by the plaintiff.

(3) **PERIOD FOR BRINGING ACTION.** Notwithstanding any other provision of the law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within two (2) years after the date the right of action accrues.

(d) **NOTICE OF FAILURE TO RELEASE LIEN.** The director shall by regulation prescribe reasonable procedures for a taxpayer to notify the director of the failure to release a lien on property of the taxpayer.

History. Acts 1989, No. 590, § 1.

26-18-809. Civil damages for certain unauthorized collection actions.

(a) **IN GENERAL.** If, in connection with any collection of state tax with respect to a taxpayer, any employee of the Revenue Division of the Department of Finance and Administration, recklessly or intentionally disregards any provision of this title, or any regulation promulgated under this title, such taxpayer may bring a civil action for damages against the director. Except as provided in § 26-18-808, such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

(b) **DAMAGES.** In any action brought under subsection (a) of this section, upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the lesser of ten thousand dollars (\$10,000) or the sum of:

(1) Actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless or intentional actions of the officer or employee; and

(2) The costs of the action.

(c) **LIMITATIONS.**

(1) **REQUIREMENT THAT ADMINISTRATIVE REMEDIES BE EXHAUSTED.** A judgment for damages shall not be awarded under subsection (b) of this section unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the division.

(2) **MITIGATION OF DAMAGES.** The amount of damages awarded under subdivision (b)(1) of this section shall be reduced by the amount of such damages which could have reasonably been mitigated by the plaintiff.

(3) **PERIOD FOR BRINGING ACTION.** Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within two (2) years after the date the right of action accrues.

(d) **DAMAGES FOR FRIVOLOUS OR GROUNDLESS CLAIMS.** Whenever it appears to the court that the taxpayer's position in proceedings before the court instituted or maintained by such taxpayer under this section, is frivolous or groundless, then damages in an amount not in excess of ten thousand dollars (\$10,000) shall be awarded to the Department of Finance and Administration by the court in the court's decision. Damages so awarded shall be assessed at the same time as the decision and shall be paid upon notice and demand from the director.

History. Acts 1989, No. 590, § 1.

CASE NOTES

Cited: *Leathers v. A & B Dirt Movers, Inc.*, 311 Ark. 320, 844 S.W.2d 314 (1992).

26-18-810. Disclosure or use of information by preparers of returns.

(a) **IMPOSITION OF PENALTY.** If any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns of tax administered under this chapter, or when any person who, for compensation prepares any such return for any other person, and who:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of any such return; or

(2) Uses any such information for any purpose other than to prepare, or assist in preparing, any such return,

shall pay a penalty of two hundred fifty dollars (\$250) for each such disclosure or use, but the total amount imposed under this subsection on such a person for any calendar year shall not exceed ten thousand dollars (\$10,000).

(b) Subsection (a) of this section shall not apply to a disclosure of information if such disclosure is made either:

(1) Pursuant to any other provision of this subchapter;

(2) Pursuant to an order of a court; or

(3) For quality or peer reviews, which are conducted under the auspices of the American Institute of Certified Public Accountants or the Securities and Exchange Commission.

(c) Subsection (a) of this section shall be in addition to the provisions of § 26-18-303.

History. Acts 1989, No. 590, § 1; 1991, § 6 provided: "The director shall promulgate regulations necessary to implement No. 998, § 1.

Publisher's Notes. Acts 1991, No. 998, that act no later than January 1, 1992."

26-18-811. Administrative appeal of liens.

(a) **IN GENERAL.** In such form and at such time as the director shall prescribe by regulation, any person shall be allowed to appeal to the director after the filing of a notice of a lien under this subchapter on the

property or the rights to property of such person, for a release of such lien alleging an error in the filing of the notice of such lien.

(b) **CERTIFICATION OF RELEASE.** If the director determines that the filing of the notice of any lien was erroneous, the director shall expeditiously, and, to the extent practicable, within fourteen (14) days after such determination, issue a certificate of release of such lien and shall include in such certificate a statement that such filing was erroneous.

History. Acts 1989, No. 590, § 1.

26-18-812. Regulations.

The director shall prescribe the regulations necessary to fully implement this subchapter within one hundred eighty (180) days after July 3, 1989.

History. Acts 1989, No. 590, § 1.

SUBCHAPTER 9 — TAXPAYER ASSISTANCE

SECTION.

26-18-901. Office of Problems Resolution and Tax Information.

26-18-902. Tax Advisory Council.

26-18-903. Employee evaluation criteria.

SECTION.

26-18-904. Collection activity — Erroneous action — Claim for damages.

Publisher's Notes. Acts 1991, No. 998, § 6 provided that "the director shall promulgate regulations necessary to implement that act no later than January 1, 1992."

26-18-901. Office of Problems Resolution and Tax Information.

(a) The Director of the Department of Finance and Administration shall request the General Assembly to appropriate funds and create positions for an Office of Problems Resolution and Tax Information, which shall resolve taxpayer problems directly and provide information to taxpayers concerning tax law. This office shall report directly to the Administrative Assistant of Revenues.

(b) The director shall have the authority to establish the duties of the office. The office shall give highest priority to reviewing taxpayer problems and taking prompt and appropriate action to resolve problems and respond to taxpayers.

History. Acts 1991, No. 998, § 2.

26-18-902. Tax Advisory Council.

(a) The Director of the Department of Finance and Administration shall establish a Tax Advisory Council consisting of representatives of the Arkansas Bar Association, the Arkansas Society of Certified Public Accountants, the Arkansas Society of Public Accountants, the Office of Problems Resolution and Tax Information, other taxpayer-oriented groups, and other representatives of the Revenue Division of the Department of Finance and Administration.

(b) The council shall meet annually to discuss tax law changes, compliance problems, and other related matters, and it shall study methods to expedite claims for refunds, protests, appeals, and cases which take an inordinate amount of time to complete.

(c) The council will develop and submit a report to the chairs of the House Committee on Revenue and Taxation and the Senate Committee on Revenue and Taxation.

History. Acts 1991, No. 998, § 3.

26-18-903. Employee evaluation criteria.

The Director of the Department of Finance and Administration shall develop employee evaluation criteria requiring compliance with the Taxpayer Bill of Rights, § 26-18-801 et seq., and quality taxpayer assistance, which shall be included in the annual evaluation of each employee whose job responsibilities include taxpayer contact.

History. Acts 1991, No. 998, § 4.

26-18-904. Collection activity — Erroneous action — Claim for damages.

(a) A claim may be filed with the Department of Finance and Administration for any actual damages sustained as a result of any erroneous action taken in a collection activity. Each claimant applying for reimbursement shall file a claim in such form as may be prescribed by the Director of the Department of Finance and Administration. In order for the claim to be granted, the claimant must establish that:

(1) The actual damage resulted from an error made by the Revenue Division of the Department of Finance and Administration; and

(2) Prior to the actual damage, the taxpayer responded to all contacts by the division and provided all requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived for reasonable cause.

(b)(1)(A) Claims made pursuant to this section shall be filed within ninety (90) calendar days after the date the actual damage was sustained.

(B) Within thirty (30) calendar days after the date the claim is received, the claim shall be approved or denied.

(2) If a claim is denied, the taxpayer shall be notified in writing of the reason for the denial of the claim.

History. Acts 1991, No. 998, § 5.

SUBCHAPTER 10 — BUSINESS CLOSURE

SECTION.

26-18-1001. Business closure authority
— Notice.

26-18-1002. Administrative hearing.

26-18-1003. Judicial relief.

26-18-1004. Business closure procedure.

SECTION.

26-18-1005. Suspension of a business license.

26-18-1006. Authority to promulgate rules.

Effective Dates. Acts 2003 (2nd Ex. Sess.), No. 46, § 2, provided: “This act becomes effective on July 1, 2004.”

Acts 2009, No. 605, § 27: July 31, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that lotteries will provide funding for scholarships to the citizens of this state; that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act; and that the state lotteries should be implemented as soon as possible to effectuate the will of the citizens of this state and implement lottery-funded scholarships as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the

Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2009, No. 606, § 27: July 31, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that lotteries will provide funding for scholarships to the citizens of this state; that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act; and that the state lotteries should be implemented as soon as possible to effectuate the will of the citizens of this state and implement lottery-funded scholarships as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

26-18-1001. Business closure authority — Notice.

(a) In addition to all other remedies provided by law for the collection of unpaid taxes, the Director of the Department of Finance and Administration may close the business of a noncompliant taxpayer as

defined by § 26-18-104, subject to the administrative and judicial appeal procedures in this subchapter, if the noncompliant taxpayer for three (3) times within any consecutive twenty-four-month period fails to either:

- (1) Report in the manner required by Arkansas law:
 - (A) Gross receipts or compensating use tax; or
 - (B) State income tax withholding for employees; or
- (2) Remit the tax that is due for the reporting period for:
 - (A) Gross receipts or compensating use tax; or
 - (B) State income tax withholding for employees.

(b)(1) The director shall give notice to the noncompliant taxpayer that the third delinquency in reporting or remitting tax in any consecutive twenty-four-month period will result in the closure of the business.

(2) The notice must be in writing and delivered to the noncompliant taxpayer by the United States Postal Service or by hand delivery.

(c)(1) If the noncompliant taxpayer has a third delinquency in reporting or remitting tax in any consecutive twenty-four-month period after the issuance of the notice provided in subsection (b) of this section, the director shall notify the noncompliant taxpayer by certified mail or by hand delivery that the business will be closed within five (5) business days from the date of the notice unless the noncompliant taxpayer makes arrangements with the director to satisfy the tax delinquency.

(2) When the fifth day falls on a Saturday, Sunday, or legal holiday, the performance of the act is considered timely if it is performed on the next succeeding business day that is not a Saturday, Sunday, or legal holiday.

(d) A noncompliant taxpayer may avoid closure of the business by:

(1) Filing all delinquent reports and by remitting the delinquent tax including any interest and penalty; or

(2) Entering into a payment agreement approved by the director to satisfy the tax delinquency.

(e) After written notice delivered to a lottery retailer by the United States Postal Service or by hand delivery, the director may pursue a remedy under this subchapter against a lottery retailer as a noncompliant taxpayer upon receiving a referral from the Arkansas Lottery Commission under § 23-115-605.

History. Acts 2003 (2nd Ex. Sess.), No. 46, § 2; 2009, No. 360, § 3; 2009, No. 605, § 24; 2009, No. 606, § 24. The 2009 amendment by identical acts Nos. 605 and 606 added (e).

Amendments. The 2009 amendment by No. 360 rewrote (a)(1) and (a)(2).

26-18-1002. Administrative hearing.

(a) A noncompliant taxpayer may request an administrative hearing concerning the decision of the Director of the Department of Finance and Administration to close the noncompliant taxpayer's business by following the procedures in this section.

(b) Within five (5) business days after the delivery or attempted delivery of the notice required by § 26-18-1001(c), the noncompliant taxpayer may file a written protest, signed by the noncompliant taxpayer or his or her authorized agent, stating the reasons for opposing the closure of the business and requesting an administrative hearing.

(c)(1) A noncompliant taxpayer may request that an administrative hearing be held in person, by telephone, upon written documents furnished by the noncompliant taxpayer, or upon written documents and any evidence produced by the noncompliant taxpayer at an administrative hearing.

(2) The director has the discretion to determine whether an administrative hearing at which testimony is to be presented will be conducted in person or by telephone.

(3) A noncompliant taxpayer who requests an administrative hearing based upon written documents is not entitled to any other administrative hearing prior to the hearing officer's rendering a decision.

(d) The administrative hearing will be conducted by a hearing officer appointed by the director under § 26-18-405.

(e)(1) The hearing officer will set the time and place for a hearing and will give the noncompliant taxpayer notice of the hearing.

(2) At the administrative hearing, the noncompliant taxpayer may be represented by an authorized representative and may present evidence in support of his or her position.

(f)(1) The hearing may be held in any city in which the Revenue Division of the Department of Finance and Administration maintains a field audit district office or in such other city as the director may designate.

(2) The administrative hearing will be held within fourteen (14) calendar days of receipt by the director of the request for hearing.

(g) The administrative hearing and determinations made by the hearing officer under this subchapter are not subject to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(h) The defense or defenses to the closure of a business under this subchapter are:

(1) Written proof that the noncompliant taxpayer filed all delinquent returns and paid the delinquent tax due including interest and penalty; or

(2) That the noncompliant taxpayer has entered into a written payment agreement, approved by the director, to satisfy the tax delinquency.

(i) The decision of the hearing officer must be in writing with copies delivered to the noncompliant taxpayer and the Department of Finance and Administration by the United States Postal Service or by hand delivery.

26-18-1003. Judicial relief.

(a)(1) If the decision of the hearing officer under § 26-18-1002 is to affirm the closure of the business, the decision shall be submitted in writing and delivered by the United States Postal Service or by hand to the noncompliant taxpayer.

(2) The noncompliant taxpayer may seek judicial relief from the decision by filing suit within twenty (20) calendar days of the date of the decision.

(b)(1) Jurisdiction for a suit under this section to contest a determination of the Director of the Department of Finance and Administration shall be in the Pulaski County Circuit Court or the circuit court of the county where the noncompliant taxpayer resides or has his or her principal place of business, where the matter shall be tried de novo.

(2)(A) If the circuit court finds that the business closure order was appropriately issued by the director, the circuit court shall issue an injunction prohibiting the further operation of the business against the noncompliant taxpayer.

(B) In the event that a business subject to an injunction issued by the circuit court as provided in this subchapter continues in operation, upon conviction, any person responsible for the decision to operate the business after the issuance of the injunction shall be guilty of a Class A misdemeanor.

(3) An appeal may be made from the circuit court to the appropriate appellate court, as provided by law.

(c) The procedures established by this section are the sole methods for seeking relief from a written decision to close the business of a noncompliant taxpayer.

(d) The decision to close the business of a noncompliant taxpayer will be final:

(1) If the noncompliant taxpayer fails to:

(A) Request an administrative hearing under § 26-18-1002; or

(B) Seek judicial relief under this section; or

(2) Upon the final decision of a circuit court or an appellate court.

(e)(1) It is unlawful for a business to continue in operation after a business closure order is issued that is:

(A) Upheld on appeal under this subchapter; or

(B) Not appealed by the noncompliant taxpayer under this subchapter.

(2) Upon conviction, any person responsible for the decision to operate the business in violation of this subchapter shall be guilty of a Class A misdemeanor.

History. Acts 2003 (2nd Ex. Sess.), No. 46, § 2; 2005, No. 1962, § 114.

26-18-1004. Business closure procedure.

(a) If a noncompliant taxpayer fails to timely seek administrative or judicial review of a business closure decision or if the business closure decision is affirmed after administrative or judicial review, the Director of the Department of Finance and Administration shall affix a written notice to all entrances of the business that:

(1) Identifies the business as being subject to a business closure order; and

(2) States that the business is prohibited from further operation.

(b)(1) The director may also lock or otherwise secure the business so that it may not be operated.

(2) However, if the business is located in the noncompliant taxpayer's home, the director shall not lock or otherwise secure the business but may post the notice under subsection (a) of this section.

(c) The director may request the assistance of the Department of Arkansas State Police or any state or local law enforcement official to post the notice or to secure the business as authorized in this section.

(d) Any taxpayer information disclosed by the director under the procedures outlined in this section shall not be subject to the confidentiality provisions of § 26-18-303.

History. Acts 2003 (2nd Ex. Sess.), No. 46, § 2.

26-18-1005. Suspension of a business license.

(a) After the decision to close the noncompliant taxpayer's business becomes final, the Director of the Department of Finance and Administration shall contact the appropriate administrative body responsible for granting licenses to operate the business and report the closure of the business.

(b) The closure of a business under this subchapter shall be grounds for the suspension or revocation of any business license granted under the laws of the State of Arkansas, excluding professional licenses.

History. Acts 2003 (2nd Ex. Sess.), No. 46, § 2.

26-18-1006. Authority to promulgate rules.

The Director of the Department of Finance and Administration may promulgate rules necessary for the enforcement of this subchapter.

History. Acts 2003 (2nd Ex. Sess.), No. 46, § 2.

CHAPTER 19

ELECTRONIC FUNDS

SECTION.**26-19-101.** Definition.**26-19-102.** Applicability of Arkansas Tax Procedure Act.**26-19-103.** Authority of director.**26-19-104.** Effective dates.**SECTION.****26-19-105.** Payment by taxpayer.**26-19-106.** Payment by corporation.**26-19-107.** Penalties.**26-19-108.** Rules and regulations.**26-19-101. Definition.**

(a) As used in this subchapter, “electronic funds transfer” means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account, commonly referenced as either an automated clearinghouse credit or an automated clearinghouse debit.

(b) A transfer of funds by wire transfer which contains no electronic record from which to identify the taxpayer, tax type, tax account number, and tax period is not an electronic funds transfer.

History. Acts 1993, No. 848, § 1; 1999, No. 1132, § 3.

26-19-102. Applicability of Arkansas Tax Procedure Act.

The provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq., shall be applicable to this subchapter.

History. Acts 1993, No. 848, § 2.

26-19-103. Authority of director.

The Director of the Department of Finance and Administration is authorized to require, and to contract for services necessary to implement, payment of taxes as specified in this subchapter by electronic funds transfer. Provided, however, that this subchapter shall not be construed to require the director to contract for such services or implement a system for payment of any taxes by electronic funds transfer if the director determines that it is fiscally unsound or administratively burdensome to do so.

History. Acts 1993, No. 848, § 3.

26-19-104. Effective dates.

The provisions of this subchapter shall be effective on and after January 1, 1994, for the taxes set forth in § 26-19-105(a)(1); on and after January 1, 1995, for the taxes set forth in § 26-19-105(a)(2); and

for the taxable period beginning on or after January 1, 1995, for the taxes set forth in § 26-19-106.

History. Acts 1993, No. 848, § 4.

26-19-105. Payment by taxpayer.

(a)(1) If the Director of the Department of Finance and Administration determines that a taxpayer's monthly liability for the following taxes for any calendar year equals or exceeds twenty thousand dollars (\$20,000), the taxpayer shall pay any tax due by electronic funds transfer:

(A) Income withholding taxes under the Arkansas Income Tax Withholding Act of 1965, § 26-51-901 et seq.;

(B) Gross receipts or sales taxes under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., §§ 26-74-201 — 26-75-705, or the Local Government Bond Act of 1985, § 14-164-301 et seq.;

(C) Compensating or use taxes under the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.;

(D) Privilege taxes;

(E) Special alcoholic beverage excise taxes under § 3-7-201;

(F) Alcoholic beverage supplemental taxes under §§ 3-9-213 and 3-9-223; and

(G) Any other taxes supplemental to the taxes in subdivisions (a)(1)(A)-(F) of this section or required to be collected and remitted in the same manner as sales or use taxes or any other law of this state.

(2) If the director determines that a taxpayer's monthly liability for the following taxes for any calendar year equals or exceeds twenty thousand dollars (\$20,000), the taxpayer shall pay the taxes due by electronic funds transfer:

(A) Taxes on tobacco products under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq.;

(B) Severance taxes under §§ 26-58-101 — 26-58-303; or

(C) Taxes on spirituous liquors, wines, malt liquors, and beer under §§ 3-5-101 — 3-7-114.

(3) If the director determines that a taxpayer's monthly liability for soft drink taxes under the Arkansas Soft Drink Tax Act, § 26-57-901 et seq., for any calendar year equals or exceeds twenty thousand dollars (\$20,000), the taxpayer shall pay the taxes due by electronic funds transfer.

(b) Monthly liability for taxes shall be determined by the director on the basis of average monthly liability for the preceding year.

(c)(1) The transfer shall be made no later than the day before the due date for payment of the taxes so that payment of the taxes is received by the director on or before the due date for payment of the taxes as required by the laws of this state.

(2)(A) A taxpayer who pays income withholding tax by electronic funds transfer or through the state module of the electronic funds transfer payment system of the United States Department of the

Treasury in the time and manner required by this section shall not be required to file a monthly withholding return.

(B) However, the taxpayer shall annually file a withholding return, setting forth the basis for each monthly payment made during the year by electronic funds transfer or through the state module of the electronic funds transfer payment system of the United States Department of the Treasury, on or before the fifteenth day following the end of each year.

(C) The annual withholding return shall be made on such a form and shall include such information as the director prescribes.

(3) Except as otherwise provided by this subchapter, no taxpayer required to pay tax by electronic funds transfer or who remits tax through the state module of the electronic funds transfer payment system of the United States Department of the Treasury shall be relieved from filing returns or complying with all other requirements of state tax laws.

(4)(A) For any withholding tax reporting period, a company or any other business enterprise that provides the service of reporting and remitting withholding tax on the wages paid to Arkansas employees by other employers shall remit all such withholding taxes to the director by electronic funds transfer.

(B) However, a company or business that provides tax reporting and remitting services shall not be required to remit withholding taxes by electronic funds transfer if the company or business provides those services for fewer than one hundred (100) Arkansas employers.

(C) As used in this subdivision (c)(4), "Arkansas employer" means any employer required by Arkansas law to withhold, report, and remit Arkansas income tax on the wages, salary, or other compensation paid to its employees within this state.

(5)(A) If the Federal Reserve Bank is closed on a due date that prohibits a taxpayer from being able to make a payment through electronic funds transfer, the payment shall be accepted as timely if made on the next day the Federal Reserve Bank is open.

(B) A return filed in conjunction with a remittance that cannot be made due to the closure of the Federal Reserve Bank shall be accepted as timely if filed in conjunction with the payment on the next day the Federal Reserve Bank is open.

(d) The following may elect to utilize the state module of the electronic funds transfer payment system of the United States Department of the Treasury to pay monthly income withholding taxes by electronic funds transfer:

(1) Any taxpayer who is not required by subdivision (a)(1) of this section to pay income withholding taxes by electronic funds transfer; or

(2) Any business that provides tax reporting and remitting services that is not required by subdivision (c)(4) of this section to pay income withholding taxes by electronic funds transfer.

History. Acts 1993, No. 848, § 5; 1995, No. 301, § 1; 1999, No. 1132, § 6; 2005, No. 389, §§ 1, 2; 2007, No. 827, §§ 198, 199, 200; 2011, No. 291, § 1.

Amendments. The 2011 amendment added (c)(5).

26-19-106. Payment by corporation.

(a) If the Director of the Department of Finance and Administration determines that a corporation's estimated quarterly state income tax liability under § 26-51-911 et seq. equals or exceeds twenty thousand dollars (\$20,000), the corporation shall pay the quarterly income taxes due by electronic funds transfer.

(b) A corporation's quarterly liability shall be determined on the basis of average quarterly liability for the preceding year.

(c)(1) The transfer shall be made no later than the day before the due date for payment of the taxes so that payment of the taxes is received by the director on or before the due date for payment of the taxes as required by the laws of this state.

(2) If the corporation's income tax payment is timely made by electronic funds transfer, the corporation is not required to file a quarterly estimated tax declaration.

History. Acts 1993, No. 848, § 6.

26-19-107. Penalties.

(a) In addition to the penalties imposed under the Arkansas Tax Procedure Act, § 26-18-101 et seq., a taxpayer required to pay taxes by electronic funds transfer who fails to so pay the amount required under any state law on or before the due date for payment of the taxes shall be assessed a penalty of five percent (5%) of the amount of taxes due.

(b) In addition to all other penalties imposed under this subchapter and the Arkansas Tax Procedure Act, § 26-18-101 et seq., a taxpayer required to pay sales taxes by electronic funds transfer who fails to so pay any of the sales taxes on or before the due date for payment of the taxes in the amounts required under § 26-52-501 or § 26-52-512 shall not be entitled to the benefits contained in §§ 26-52-503 and 26-52-512.

(c)(1) With respect to an electronic funds transfer by automated clearinghouse debit, "to pay taxes by electronic funds transfer" means that the following conditions are met on or before the due date for such payment:

(A) The taxpayer initiates the automated clearinghouse debit by calling the designated toll-free telephone number by 3:00 p.m. on the last business day prior to the due date;

(B) The taxpayer accurately provides the Director of the Department of Finance and Administration with sufficient information from which the payment may be applied to the correct account, including, but not limited to, the taxpayer's name, account number, tax type, tax period, and the amount of the payment; and

(C) The taxpayer's bank account designated as the account to be debited contains adequate funds to cover the payment of taxes by

debit transfer at the time the debit transaction is initiated and continuing through the due date of the tax payment.

(2) With respect to an electronic funds transfer by automated clearinghouse credit, “to pay taxes by electronic funds transfer” means that the following conditions are met on or before the due date for the payment:

(A)(i) The taxpayer initiates a successful prenote or test transaction containing necessary information in cash concentration or disbursement plus tax payment addendum (CCD + TXP) format.

(ii) “Tax payment addendum format” means a technical format for the communication of limited tax remittance data accompanying a payment through the automated clearinghouse system and includes a list of standard tax-type and account-type codes;

(B) The transfer contains an electronic addenda which allows the director to identify the taxpayer, tax account number, tax payment amount, tax type, and tax period in accordance with instructions provided by the director;

(C) The taxpayer transfers the amount of funds due; and

(D) The taxpayer’s designated bank account contains adequate funds to cover the credit transfer at the time the credit transaction is initiated and continuing through the due date of the tax payment.

(3)(A) A taxpayer is considered to have failed to pay taxes by electronic funds transfer if the conditions stated in subdivision (c)(1) or (c)(2) of this section are not met.

(B) The director will notify the taxpayer in writing of the failure to meet the conditions with respect to a particular reporting period.

(C) Subsequent failures to meet the prescribed conditions shall result in the assessment of penalties described in subsection (a) of this section without necessity of additional written notice.

History. Acts 1993, No. 848, §§ 7, 8;
1999, No. 1132, § 4.

26-19-108. Rules and regulations.

The Director of the Department of Finance and Administration is authorized to adopt rules and regulations which he or she deems necessary to implement and enforce the provisions of this subchapter.

History. Acts 1993, No. 848, § 9.

CHAPTER 20

UNIFORM SALES AND USE TAX ADMINISTRATION ACT

SECTION.

26-20-101. Title.

26-20-102. Definitions.

26-20-103. Legislative finding.

SECTION.

26-20-104. Authority to enter agreement.

26-20-105. Relationship to state law.

26-20-106. Agreement requirements.

SECTION.

26-20-107. Cooperating sovereigns.

26-20-108. Limited binding and beneficial effect.

SECTION.

26-20-109. Seller and third-party liability.

Effective Dates. Acts 2001, No. 1279, § 10: Apr. 4, 2001. Emergency clause provided: "It is hereby found and determined by the 83rd General Assembly that passage of this bill would allow Arkansas to continue participating in the national Streamlined Sales Tax Project; that the Streamlined Sales Tax Project is an effort created by state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax administration; that the Streamlined Sales Tax System is focused on improving sales and use tax administration systems for all sellers and for all types of commerce; and that it is imperative for states to develop a more modern

sales and use tax system in order to level the playing field between in-state and out-of-state sellers and preserve the sales and use tax system. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

26-20-101. Title.

This chapter shall be known as and referred to as the "Uniform Sales and Use Tax Administration Act".

History. Acts 2001, No. 1279, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

26-20-102. Definitions.

As used in this chapter:

(1) "Agreement" means the Streamlined Sales and Use Tax Agreement;

(2) "Certified automated system" means software certified jointly by the states that are signatories to the agreement and which is used to calculate the sales and use tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction;

(3) "Certified service provider" means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales and use tax functions;

(4) "Director" means the Director of the Department of Finance and Administration;

(5) “Person” means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity;

(6) “Sales tax” means the tax levied under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.;

(7) “Seller” means any person making sales, leases or rentals of personal property or services;

(8) “State” means any state of the United States and the District of Columbia; and

(9) “Use tax” means the tax levied under the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

History. Acts 2001, No. 1279, § 2.

26-20-103. Legislative finding.

The Eighty-Third General Assembly finds that this state should enter into an agreement with one (1) or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

History. Acts 2001, No. 1279, § 3.

26-20-104. Authority to enter agreement.

(a) The Director of the Department of Finance and Administration is authorized and directed to enter into the Streamlined Sales and Use Tax Agreement with one (1) or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

(b) In furtherance of the agreement, the director is authorized to act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers.

(c) The director is further authorized to take other actions reasonably required to implement the provisions set forth in this chapter.

(d) Other actions authorized by this section include, but are not limited to, the adoption of rules and regulations and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement.

(e) The director or his or her designee is authorized to represent this state before the other states that are signatories to the agreement.

History. Acts 2001, No. 1279, § 4.

26-20-105. Relationship to state law.

(a) No provision of the agreement authorized by this chapter in whole or part invalidates or amends any provision of the law of this state.

(b) Adoption of the agreement by this state does not amend or modify any law of this state.

(c) Implementation of any condition of the agreement in this state, whether adopted before, at, or after membership of this state in the agreement, must be by the action of this state.

History. Acts 2001, No. 1279, § 5.

26-20-106. Agreement requirements.

The Director of the Department of Finance and Administration shall not enter into the agreement unless it requires each state to abide by the following requirements:

(a) **UNIFORM STATE RATE.** The agreement must set restrictions to achieve more uniform state rates through the following:

(1) Limiting the number of state rates;

(2) Limiting the application of maximums on the amount of state tax that is due on a transaction;

(3) Limiting the application of thresholds on the application of state tax.

(b) **UNIFORM STANDARDS.** The agreement must establish uniform standards for the following:

(1) The sourcing of transactions to taxing jurisdictions;

(2) The administration of exempt sales;

(3) The allowances a seller can take for bad debts;

(4) Sales and use tax returns and remittances.

(c) **UNIFORM DEFINITIONS.** The agreement must require states to develop and adopt uniform definitions of sales and use tax terms. The definitions must enable a state to preserve its ability to make policy choices not inconsistent with the uniform definitions.

(d) **CENTRAL REGISTRATION.** The agreement must provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.

(e) **NO NEXUS ATTRIBUTION.** The agreement must provide that registration with the central registration system and the collection of sales and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax.

(f) **LOCAL SALES AND USE TAXES.** The agreement must provide for reduction of the burdens of complying with local sales and use taxes through the following:

(1) Restricting variances between the state and local tax bases;

(2) Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with,

remit funds to, or be subject to independent audits from local taxing jurisdictions;

(3) Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes;

(4) Providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.

(g) **MONETARY ALLOWANCES.** The agreement must outline any monetary allowances that are to be provided by the states to sellers or certified service providers.

(h) **STATE COMPLIANCE.** The agreement must require each state to certify compliance with the terms of the agreement prior to joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member.

(i) **CONSUMER PRIVACY.** The agreement must require each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information.

(j) **ADVISORY COUNCILS.** The agreement must provide for the appointment of an advisory council of private sector representatives and an advisory council of non-member state representatives to consult with in the administration of the agreement.

History. Acts 2001, No. 1279, § 6.

26-20-107. Cooperating sovereigns.

(a) The agreement authorized by this chapter is an accord among individual cooperating sovereigns in furtherance of their governmental functions.

(b) The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

History. Acts 2001, No. 1279, § 7.

26-20-108. Limited binding and beneficial effect.

(a)(1) The agreement authorized by this chapter binds and inures only to the benefit of this state and the other member states.

(2) No person, other than a member state, is an intended beneficiary of the agreement.

(3) Any benefit to a person other than a state is established by the law of this state and the other member states and not by the terms of the agreement.

(b)(1) Consistent with subsection (a) of this section, no person shall have any cause of action or defense under the agreement or by virtue of this state's approval of the agreement.

(2) No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or

other instrumentality of this state, or any political subdivision of this state on the ground that the action or inaction is inconsistent with the agreement.

(c) No law of this state, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

History. Acts 2001, No. 1279, § 8.

26-20-109. Seller and third-party liability.

(a)(1) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes.

(2) As the seller's agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this section.

(3) A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud.

(4) In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider.

(5) A seller is subject to audit for transactions not processed by the certified service provider.

(6) The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

(b)(1) A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system.

(2) A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

(c) A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

History. Acts 2001, No. 1279, § 9.

CHAPTER 21

STREAMLINED SALES TAX ADMINISTRATIVE ACT

SECTION.

26-21-101. Title.

26-21-102. Legislative findings and intent.

26-21-103. Definitions.

26-21-104. Seller registration.

26-21-105. Taxing jurisdictions.

26-21-106. Relief from certain liability.

26-21-107. Administration of exemptions.

26-21-108. Returns and remittance of funds.

26-21-109. Customer refund procedures.

SECTION.

26-21-110. Amnesty for registration.

26-21-111. Certification and payment of service providers and automated systems.

26-21-112. Effective date for rate changes.

26-21-113. Promulgation of rules.

26-21-114. Governing board.

26-21-115. Confidentiality and privacy protections with respect to model 1 sellers.

Effective Dates. Acts 2005, No. 2163, § 2: July 1, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this state is losing sales and use tax revenue due to the rapid growth of Internet sales; that the playing field between local businesses and out-of-state businesses needs to be leveled; that an undue burden on interstate commerce

currently exists; and that this act is necessary in order for Arkansas to participate in the Streamlined Sales Tax Agreement. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005.”

Acts 2007, No. 181, § 45: January 1, 2008.

26-21-101. Title.

This chapter shall be known and may be cited as the “Streamlined Sales Tax Administrative Act”.

History. Acts 2005, No. 2163, § 1.

26-21-102. Legislative findings and intent.

The Eighty-Fifth General Assembly finds that this state should enter into an agreement with one (1) or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

History. Acts 2005, No. 2163, § 1.

26-21-103. Definitions.

As used in this chapter:

(1) “Agent” means a person appointed by a seller to represent the seller before the State of Arkansas and the other states in the agreement;

(2) "Agreement" means the multistate agreement to simplify and modernize sales and use tax administration known as the "Streamlined Sales and Use Tax Agreement";

(3) "Certified automated system" means software that is certified under the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction;

(4) "Certified service provider" means an agent certified under the agreement to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases;

(5)(A) "Entity-based exemption" means an exemption based on who purchases the product or who sells the product.

(B) An exemption that is available to all individuals shall not be considered an entity-based exemption;

(6) "Model 1 seller" means a seller registered under the agreement that has selected a certified service provider as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases;

(7) "Model 2 seller" means a seller registered under the agreement that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax;

(8)(A) "Model 3 seller" means a seller registered under the agreement that has:

(i) Sales in at least five (5) member states;

(ii) Total annual sales revenue of at least five hundred million dollars (\$500,000,000);

(iii) A proprietary system that calculates the amount of tax due each jurisdiction; and

(iv) Entered into a performance agreement with the member states that establishes a tax performance standard for the seller.

(B) As used in subdivision (8)(A) of this section, "seller" includes an affiliated group of sellers using the same proprietary system;

(9) "Model 4 seller" means a seller that is registered under the agreement and is not a model 1 seller, model 2 seller, or model 3 seller;

(10) "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity;

(11) "Purchaser" means a person to which a sale of personal property is made or to which a service is furnished;

(12) "Seller" means a person making sales, leases, or rentals of personal property or services;

(13) "State" means any state of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(14) "Use-based exemption" means an exemption based on a specified use of the product by the purchaser.

History. Acts 2005, No. 2163, § 1; in (6) through (8)(A); and inserted present 2007, No. 181, §§ 1, 2; 2011, No. 291, § 2. (9) and redesignated the remaining subdivisions accordingly.

Amendments. The 2011 amendment inserted “registered under the agreement”

26-21-104. Seller registration.

(a) The Department of Finance and Administration shall participate in an online sales and use tax registration system in cooperation with the states that are members of the agreement.

(b) The department shall not use a seller’s registration with the online sales and use tax registration system as provided in subsection (a) of this section and any subsequent collection of a sales or use tax in determining whether the seller has nexus with the state for any tax at any time.

(c) When registering, a seller may select one (1) of the following models:

- (1) Model 1 seller;
- (2) Model 2 seller;
- (3) Model 3 seller; or
- (4) Model 4 seller.

History. Acts 2005, No. 2163, § 1; **Amendments.** The 2011 amendment 2007, No. 181, § 3; 2011, No. 291, § 3. added (c).

26-21-105. Taxing jurisdictions.

The Department of Finance and Administration shall develop a downloadable online database system to assign state and local taxing jurisdictions, boundaries, and sales and use tax rates.

History. Acts 2005, No. 2163, § 1; 2007, No. 181, § 4.

26-21-106. Relief from certain liability.

(a) Except as provided in subsection (c) of this section, a seller or certified service provider using a database provided by the Department of Finance and Administration shall not be liable to the State of Arkansas or its local jurisdictions for charging and collecting the incorrect amount of sales or use tax if the seller or the certified service provider relied on erroneous data provided by the department on sales or use tax rates, boundaries, taxing jurisdiction assignments, or the taxability matrix.

(b) The department shall promulgate rules to provide a purchaser relief from a sales or use tax, penalties, and interest for failing to pay the correct amount of sales or use tax if erroneous information on sales or use tax rates, boundaries, or taxing jurisdiction assignments or in the taxability matrix provided by the department has been relied on by the purchaser, the purchaser’s seller, or the purchaser’s certified service provider.

(c)(1) If the department provides an address-based boundary database for assigning taxing jurisdictions and their associated sales or use tax rates, the department may cease providing the relief from liability provided in subsections (a) and (b) of this section if the department gave the seller or the certified service provider adequate notice.

(2) If a seller demonstrates that requiring the use of the address-based database would create an undue hardship, the department may extend the relief from liability to the seller for a designated period of time.

(d)(1) If the effective date of a state sales or use tax rate change is less than thirty (30) days from the enactment of the statute providing the rate change, a seller is relieved of liability for failing to collect sales or use tax at the new rate if:

(A) The seller collected sales or use tax at the effective rate immediately preceding the change; and

(B) The seller's failure to collect at the newly effective sales or use tax rate does not extend beyond thirty (30) days after the date of enactment of the new sales or use tax rate.

(2) The seller is not relieved of liability if the seller fraudulently failed to collect at the new sales or use tax rate or solicited purchasers based on the immediately preceding effective sales or use tax rate.

History. Acts 2005, No. 2163, § 1; **Amendments.** The 2011 amendment 2007, No. 181, § 5; 2011, No. 291, § 4. added (d).

26-21-107. Administration of exemptions.

(a) The Department of Finance and Administration shall administer use-based exemptions and entity-based exemptions when practicable through a direct pay permit, an exemption certificate, or another means that does not burden sellers.

(b)(1) A seller that follows the exemption requirements as prescribed by the Director of the Department of Finance and Administration shall be relieved from any tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption.

(2) If it is determined that the purchaser improperly claimed an exemption, the department shall hold the purchaser liable for the nonpayment of tax.

(3) The relief from liability provided in subdivision (b)(1) of this section does not apply to a seller that:

(A) Fraudulently fails to collect the sales or use tax;

(B) Solicits a purchaser to participate in the unlawful claim of an exemption; or

(C) Accepts an exemption certificate from a purchaser claiming an entity-based exemption when:

(i) The subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller; and

(ii) The state where that location resides provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available in that state.

(4)(A) A seller may obtain a fully completed exemption certificate or capture the relevant data elements required by the department within ninety (90) days after the date of sale.

(B)(i) If the seller has not obtained an exemption certificate or all relevant data elements and the department makes a request for substantiation of the exemption, the seller has one hundred twenty (120) days from the date of the request to prove by other means that the transaction was not subject to sales or use tax or to obtain in good faith a fully completed exemption certificate from the purchaser.

(ii) As used in subdivision (b)(4)(B)(i) of this section, “good faith” means that the seller obtains a certificate that claims an exemption that:

(a) Was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced;

(b) Could be applicable to the item being purchased; and

(c) Is reasonable for the purchaser’s type of business.

(c) A third party vendor may claim a resale exemption based on an exemption certificate provided by its customer or any other acceptable information available to the third party vendor evidencing qualification for a resale exemption regardless of whether the customer is registered with the department to collect and remit sales or use tax.

History. Acts 2005, No. 2163, § 1; **Amendments.** The 2011 amendment 2007, No. 181, § 6; 2011, No. 291, § 5. added (b)(4)(B)(ii).

26-21-108. Returns and remittance of funds.

(a) The Director of the Department of Finance and Administration shall promulgate rules to provide:

(1) An alternative method for making payments if an electronic funds transfer fails on its due date; and

(2) A rounding algorithm for sales or use tax computation.

(b)(1) The Department of Finance and Administration shall develop a simplified electronic return to be used for all state and local sales and use taxes levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(2) The department shall provide a separate reporting form for any other special or miscellaneous excise taxes so as not to violate the agreement.

(3) The department shall allow all sellers, whether or not the seller is registered under the agreement, to file a simplified electronic return.

(4) A model 4 seller that does not have a legal requirement to register in Arkansas is not required to submit information relating to exempt sales on the simplified electronic return.

(5) A seller that elects to file a simplified electronic return shall give at least a three-month notice of the seller's intent to discontinue filing a simplified electronic return.

(c) The department shall allow a seller to elect to compute the sales or use tax due on a transaction on an item or an invoice basis and shall allow the rounding rule to be applied to the aggregated state and local sales or use taxes.

(d)(1) A seller that is registered under the agreement and indicated at the time of registration that it does not anticipate making a sale that would be sourced to Arkansas is not required to file a return.

(2) If the seller makes a taxable sale sourced to Arkansas, the seller shall file a return on or before the twentieth day of the month following the sale.

(e)(1) A seller registered under the agreement that does not have a legal requirement to register in Arkansas shall be given a minimum of thirty (30) days' notice before the department establishes a tax liability based solely on the seller's failure to timely file.

(2) However, the department may establish a tax liability based solely on a seller's failure to timely file if the seller has a history of nonfiling or late filing.

History. Acts 2005, No. 2163, § 1; 2007, No. 181, § 7; 2011, No. 291, § 6.

Amendments. The 2011 amendment substituted "simplified electronic return" for "simplified tax reporting form" in (b)(1); deleted former (b)(3) and redesignated former (b)(4) as (b)(3); substituted

"all sellers, whether or not the seller is registered under the agreement, to file a simplified electronic return" for "a Model 1, Model 2, or Model 3 seller to submit its sales and use tax return in a simplified format" in present (b)(3); inserted present (b)(4) and (b)(5); and added (d) and (e).

26-21-109. Customer refund procedures.

(a)(1) A cause of action against the seller for over-collected sales or use taxes does not accrue until sixty (60) days after a purchaser has provided written notice to the seller.

(2) The written notice to the seller required in subdivision (a)(1) of this section must contain the information necessary to determine the validity of the request.

(b) In connection with a purchaser's request from a seller of over-collected sales or use taxes, a seller shall be presumed to have a reasonable business practice if in the collection of the sales or use taxes, the seller:

(1) Uses either a certified service provider or a certified automated system, including a certified proprietary system, that is certified by the State of Arkansas; and

(2) Has remitted to the Department of Finance and Administration all taxes collected less any deductions, credits, or collection allowances.

History. Acts 2005, No. 2163, § 1.

26-21-110. Amnesty for registration.

(a) The Director of the Department of Finance and Administration shall provide amnesty for uncollected or unpaid sales or use tax to a seller that registers to pay or to collect and remit applicable sales or use tax on sales made to purchasers in the state in accordance with the terms of the agreement, provided that the seller was not registered to collect sales and use tax in the State of Arkansas in the twelve-month period preceding the effective date of the state's participation in the agreement.

(b) The amnesty shall preclude assessment for uncollected or unpaid sales or use tax, penalty, and interest for sales made during the period that the seller was not registered in the state, provided registration occurs within twelve (12) months of the date the state is found to be in compliance with the agreement.

(c) The amnesty shall not be available to a seller with respect to any matter or matters for which the seller received notice of the commencement of an audit and the audit is not yet finally resolved, including any related administrative and judicial processes.

(d) The amnesty shall not be available for sales or use taxes already paid or remitted to the Department of Finance and Administration or to taxes collected by the seller.

(e) The amnesty shall be fully effective, absent the seller's fraud or intentional misrepresentations of a material fact, so long as the seller continues its Arkansas sales and use tax registration and continues payment or collection and remittance of applicable sales or use taxes for a period of at least thirty-six (36) months from the date amnesty was awarded.

(f) The amnesty shall be applicable only to sales or use taxes due from a seller in its capacity as a seller and not to sales or use taxes due from a seller in its capacity as a purchaser.

(g) The director shall also provide amnesty to a seller for uncollected or unpaid sales or use tax if:

(1) The seller was already registered with the agreement at the time Arkansas became a full member of the agreement; and

(2) The seller was not registered to collect sales and use tax in Arkansas in the twelve-month period preceding the effective date of Arkansas's full membership in the agreement.

History. Acts 2005, No. 2163, § 1;
2007, No. 181, § 8.

26-21-111. Certification and payment of service providers and automated systems.

(a) The Director of the Department of Finance and Administration may:

(1) Certify service providers and automated systems to aid in the administration of sales and use tax collections; and

(2) Provide a monetary allowance to the certified service providers, certified automated systems, and to sellers that do not have a requirement to register to collect the gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(b)(1) A certified service provider or model 2 seller using a certified automated system is not liable to the State of Arkansas or its local jurisdictions for charging and collecting the incorrect amount of sales or use tax.

(2) The relief from liability provided in this section is not available to a certified service provider or model 2 seller that has incorrectly classified an item or transaction into a product category certified by the state.

(3)(A) If the Department of Finance and Administration determines that an item or transaction is incorrectly classified as to its taxability, it shall notify the certified service provider or model 2 seller of the incorrect classification.

(B) The certified service provider or model 2 seller shall have ten (10) days to revise the classification after receipt of the notice.

(C) Upon the expiration of ten (10) days, the certified service provider or model 2 seller is liable for the failure to collect the correct amount of sales or use tax due.

(c) A certified service provider has the same relief from liability as sellers provided in § 26-21-107.

History. Acts 2005, No. 2163, § 1; added the (a) designation; deleted former 2007, No. 181, § 9; 2011, No. 291, § 7. (a)(3); and added present (b).

Amendments. The 2011 amendment

26-21-112. Effective date for rate changes.

The effective date of rate changes for services covering a period starting before and ending after the statutory effective date shall be as follows:

(1) For a rate increase, the new rate shall apply to the first billing period starting on or after the effective date; and

(2) For a rate decrease, the new rate shall apply to bills rendered on or after the effective date.

History. Acts 2005, No. 2163, § 1.

26-21-113. Promulgation of rules.

The Director of the Department of Finance and Administration shall promulgate rules and develop forms to implement the provisions of this chapter.

History. Acts 2005, No. 2163, § 1.

26-21-114. Governing board.

For the purposes of representing this state on the governing board authorized by the agreement, there shall be four (4) representatives as follows:

- (1) One (1) member appointed by the President Pro Tempore of the Senate;
- (2) One (1) member appointed by the Speaker of the House of Representatives;
- (3) One (1) member appointed by the Governor; and
- (4) The Director of the Department of Finance and Administration or his or her designee.

History. Acts 2005, No. 2163, § 1.

26-21-115. Confidentiality and privacy protections with respect to model 1 sellers.

(a) The purpose of this section is to set forth a policy to protect the confidentiality rights of all participants in the agreement system and the privacy interests of consumers who deal with model 1 sellers.

(b) As used in this section:

(1) “Anonymous data” means information that does not identify a person;

(2) “Confidential taxpayer information” means all information that is protected under Arkansas’s laws, rules, regulations, and privileges; and

(3) “Personally identifiable information” means information that identifies a person.

(c) With very limited exceptions, a certified service provider shall perform its tax calculation, remittance, and reporting functions without retaining the personally identifiable information of consumers.

(d) When any personally identifiable information that has been collected and retained is no longer required for the purposes of verifying the validity of an exemption, the personally identifiable information shall no longer be retained by the Department of Finance and Administration.

(e) When personally identifiable information regarding an individual is retained, the department shall provide reasonable access by such individual to his or her own information in the state’s possession and a right to correct any inaccurately recorded information.

(f) If anyone other than the state or a person authorized by this state’s law or the agreement seeks to discover personally identifiable information, a reasonable and timely effort to notify the individual identified in the personally identifiable information of the request shall be made.

(g) The privacy policy in this section is subject to enforcement in the same manner as set out in § 26-18-303.

(h) All laws and rules regarding the collection, use, and maintenance of confidential taxpayer information remain fully applicable and binding.

History. Acts 2011, No. 291, § 8.

CHAPTER 22
[RESERVED]

SUBTITLE 3. ADMINISTRATION OF LOCAL TAXES

CHAPTER 23
TAXPAYERS

SUBCHAPTER.

- 1. GENERAL PROVISIONS. [RESERVED.]
- 2. ARKANSAS PROPERTY TAXPAYER BILL OF RIGHTS.

SUBCHAPTER 1 — GENERAL PROVISIONS
[Reserved]

SUBCHAPTER 2 — ARKANSAS PROPERTY TAXPAYER BILL OF RIGHTS

SECTION.

- 26-23-201. Title.
- 26-23-202. Purpose.
- 26-23-203. Notice procedures.

SECTION.

- 26-23-204. Tax bill information.
- 26-23-205. Taxpayer notice.

Cross References. Taxpayer Bill of Rights, § 26-18-801 et seq.

Effective Dates. Acts 2009, No. 151, § 3: Jan. 1, 2008. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that not all counties are following the dictates of Arkansas Constitution, Amendment 79; that some counties are not allowing persons that meet the property tax relief requirements under Arkansas Constitution, Amendment 79, to be assessed a later assessed value if that assessment is lower; that this results in taxpayers not being treated equally across

the state; that all counties should allow its taxpayers that qualify for the property tax relief to be assessed a later assessed value if that assessment is lower; and that all counties should follow the provisions of Arkansas Constitution, Amendment 79. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on January 1, 2008.”

Acts 2009, No. 278, § 2: July 31, 2009. Effective date clause provided: “Effective Date. This act is effective for the assessment year 2010 and thereafter.”

26-23-201. Title.

This act shall be referred to as the “Arkansas Property Taxpayer Bill of Rights”.

History. Acts 1999, No. 572, § 1.

26-27-317, 26-27-318, 26-34-105, 26-35-

Meaning of “this act”. Acts 1999, No. 901.

572, codified as §§ 26-23-201—26-23-204,

26-23-202. Purpose.

(a) It is the intent of this act that the following objectives shall apply to the operation of the property tax system for Arkansas taxpayers:

(1) To be taxed fairly and assessed equitably throughout the state;

(2) To have access to information concerning how the system of property taxation works and how their tax dollars are spent;

(3) To participate in the determination of tax rates or millage rates levied in local taxing units;

(4) To receive fair and courteous treatment throughout the property tax system;

(5) To review the reassessments and methodology used in determining the value of their properties and that of comparable properties;

(6) To receive a prompt response by government officials to inquiries regarding the value of their properties;

(7) To require government officials or others responsible for the valuation of property to review and correct any measurement error to the nearest foot, clerical error, or other technical error which occurred in the valuation of their properties;

(8) To be sent a notice setting forth the following:

(A) The amount of any change in the value of their properties;

(B) The right of the taxpayer to appeal such a change; and

(C) The procedures which must be followed on appeal, including the name, title, address, and telephone number of the secretary of the county equalization board to whom the appeal and any supporting documentation should be directed, the deadline for requesting a hearing, and the proof required for adjustment of value;

(9) To complete all steps in the appeal process before paying any disputed taxes;

(10) To receive written notification of the outcome of any appeal; and

(11) To recover any overpayment of taxes resulting from erroneous assessments within three (3) years after payment.

(b) The rights enumerated in subsection (a) of this section shall be prominently displayed in each county assessor’s and county collector’s office in Arkansas.

(c)(1) The provisions of subsections (a) and (b) of this section are goals and objectives only and no person or entity shall have a civil cause of action for any alleged breach or violation of any of these goals and objectives.

(2) However, subdivision (c)(1) of this section shall not be interpreted or construed to limit the rights of any taxpayer under any other law of this state.

History. Acts 1999, No. 572, § 2.

Meaning of “this act”. See note to § 26-23-201.

26-23-203. Notice procedures.

The following procedures shall be employed to ensure taxpayers receive adequate notice of value changes:

(1)(A) Countywide reappraisals of real property shall be completed no later than July 1 of the year in which the countywide reappraisal is scheduled to be completed.

(B) Original valuations of newly discovered and newly constructed real property shall be completed no later than July 1 of each assessment year;

(2)(A) Notice of value changes shall be sent to affected property owners no later than ten (10) business days after July 1 of the assessment year.

(B) The notice of value changes shall include:

(i) The previous year’s full and assessed value, the reassessed full and assessed value, or the new full and assessed value resulting from an original assessment of newly discovered and newly constructed property;

(ii) The time period for meeting with the county assessor or his or her representative to review the new valuation of the taxpayer’s property;

(iii) A statement that property owners have the right to appeal the new valuation to the county equalization board;

(iv) The deadline to petition the county equalization board to conduct a hearing to review the contested assessment; and

(v) A summary of laws relating to the criteria established by the Supreme Court to uphold an assessment determination by the county equalization board; and

(3)(A) Property owners shall have the right to have a meeting with the county assessor or his or her representative for a change in value before petitioning the county equalization board for a hearing.

(B) In order to accommodate property owners, the county assessor or his or her representative shall conduct the informal hearings required by this section after normal business hours at least one (1) day per week.

History. Acts 1999, No. 572, § 3; 2009, No. 278, § 1. Deleted “and personal” following “real” in (1)(B).

Amendments. The 2009 amendment

26-23-204. Tax bill information.

In order to assist property taxpayers to better understand their property tax bills, the following information shall be included on each tax bill sent by the county collector:

- (1) The dollar amount of the taxpayer’s total tax bill distributed to each taxing unit in the county where the taxpayer’s property is taxed;
- (2) The millage rate levied by each taxing unit used to determine the tax distribution to each taxing unit and the percentage of the full value of the taxpayer’s property that each millage rate levy represents;
- (3) The percentage of the full value of the property shall be calculated by multiplying the legal assessment level by the appropriate millage rate levy; and
- (4) The sum of the millage rates levied by each taxing unit, the percentage of the full value of the taxpayer’s property that the sum of the millage rate levies represents, and the total dollar amount due and billed.

History. Acts 1999, No. 572, § 6.

26-23-205. Taxpayer notice.

(a) A county collector shall send a property taxpayer a yearly notice concerning his or her rights under the provisions of Arkansas Constitution, Amendment 79, containing the following:

- (1) A statement that the assessed value of a homestead used as a principal place of residence and owned by a taxpayer who is disabled or sixty-five (65) years of age or older shall be the lower of the assessed value at the time the taxpayer qualified for the property tax relief under Arkansas Constitution, Amendment 79, or a later assessed value; and
 - (2) The county assessor’s contact information.
- (b) The yearly notice required in subsection (a) of this section may be sent with the taxpayer’s tax statement or by separate first-class mail.

History. Acts 2007, No. 467, § 1; 2009, No. 151, § 1. substituted “be the lower of the assessed value ... or a later assessed value” for “not increase” in (a)(1).
Amendments. The 2009 amendment

CHAPTER 24

ARKANSAS PUBLIC SERVICE COMMISSION

SECTION.	SECTION.
26-24-101. Tax Division created.	26-24-107. Rules and regulations.
26-24-102. Power and authority generally.	26-24-108. Extension of time.
26-24-103. Assessment of utility property.	26-24-109. Suits.
26-24-104. Basis of valuation.	26-24-110. Information from public officials.
26-24-105. Supervision of local authorities.	26-24-111. Information from private persons or corporations.
26-24-106. Opinions of commission.	26-24-112. Witnesses.
	26-24-113. Depositions.

SECTION.

- 26-24-114. Appointment of agents — Penalty for disclosing information.
 26-24-115. Investigation by agents.
 26-24-116. Investigations by commission.
 26-24-117. Omitted property.

SECTION.

- 26-24-118. Meetings of assessors.
 26-24-119. Investigation of tax systems.
 26-24-120. Consultation with Governor.
 26-24-121. Biennial report.
 26-24-122. Appearance of witnesses.
 26-24-123. Appeal of actions or orders.

A.C.R.C. Notes. The authority of the Arkansas Public Service Commission with respect to the equalization and assessment of property and the administration of tax laws, except with respect to public utilities and carriers, was transferred to the Assessment Coordination Department by Acts 1997, No. 436. See §§ 25-28-102 and 25-28-103.

Cross References. Arkansas Public Service Commission as the State Board of Equalization, § 26-27-201 et seq.

Penalty for violation of law or orders of Public Service Commission, § 26-2-102.

Effective Dates. Acts 1927, No. 129, § 38: approved Mar. 9, 1927. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage."

Acts 1949, No. 191, § 12: Feb. 28, 1949. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that great inequalities and discriminations in property assessments now exist throughout the State, that there is urgent need for equalization, and that enactment of this bill will provide for more efficient and adequate administration of the tax laws. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect

and be in force from and after the date of its passage and approval."

Acts 1951, No. 155, § 3: July 1, 1951.

Acts 1959, No. 245, § 2: July 1, 1959.

Acts 1961, No. 129, § 12: approved Feb. 22, 1961. Emergency clause provided: "Since the wording of the present statutes relating to the assessment, certification, and appeals from the assessment as determined and fixed by the Tax Division is somewhat confusing, and since this confusion adversely affects the administration of the assessments fixed by the Tax Division, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in force from and after its passage."

Acts 1975, No. 175, § 5: Feb. 18, 1975. Emergency clause provided: "It is determined by the Legislature that property used by certain cable television systems is not assessed for taxation, and that some question exists as to the nature and extent of the Public Service Commission's jurisdiction and duty as regards this type of business. Therefore, this enactment is immediately necessary to provide that such properties are properly assessed and that the jurisdiction over such businesses shall be clearly defined. An emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from the date of its passage and approval."

RESEARCH REFERENCES

ALR. Estoppel of state or local government in tax matters. 21 A.L.R.4th 573.

Am. Jur. 71 Am. Jur. 2d, State Tax., §§ 392-427, 438-442.

CASE NOTES

Constitutionality.

Acts 1927, No. 129 held constitutional.
Arkansas Tax Comm'n v. Ashby, 217 Ark.
759, 233 S.W.2d 361 (1950).

26-24-101. Tax Division created.

For the purpose of assisting it in the carrying out of its functions, powers, and duties, there are created within the Arkansas Public Service Commission the following divisions:

(1)(A) A Tax Division which shall have the responsibility of performing all functions and duties regarding assessment and equalization of properties of public utilities and public carriers.

(B)(i)(a) All rules, regulations, and procedures to be followed by the Tax Division in assessing public utilities shall be promulgated by the Arkansas Public Service Commission, and all assessments of public utilities made by the Tax Division shall be upon the approval of the Arkansas Public Service Commission.

(b) Any person aggrieved by any assessment of any public utility made by the Tax Division and approved by the Arkansas Public Service Commission shall, upon petition, be entitled to a hearing before the Arkansas Public Service Commission, and appeals from the rulings of the Arkansas Public Service Commission shall be to the circuit court upon the record made before the Arkansas Public Service Commission in the manner provided by law.

(ii)(a) All rules, regulations, and procedures to be followed by the Tax Division in assessing public carriers shall be promulgated by the Arkansas Transportation Commission [abolished], and all assessments of public carriers made by the Tax Division shall be upon the approval of the Arkansas Transportation Commission [abolished].

(b) Any person aggrieved by any assessment of any public carrier made by the Tax Division and approved by the Arkansas Transportation Commission [abolished] shall, upon petition, be entitled to a hearing before the Arkansas Public Service Commission, and appeals from the rulings of the Arkansas Transportation Commission [abolished] shall be to the circuit court upon the record made before the Arkansas Transportation Commission [abolished] in the manner provided by law; and

(2) An Assessment Coordination Division [abolished], the duties of which shall be such of those formerly imposed upon the Arkansas Assessment Coordination Department [abolished] as shall be assigned to the Assessment Coordination Division [abolished] by the Arkansas Public Service Commission. None of the duties so assigned shall relate to the assessment of the properties of public carriers or public utilities.

History. Acts 1959, No. 245, § 1; 1961, No. 129, § 8; A.S.A. 1947, § 84-114; Acts 2009, No. 218, § 1; 2009, No. 951, §§ 1, 2.

A.C.R.C. Notes. The Assessment Coordination Division of the Public Service Commission was transferred to the Assessment Coordination Department by a type 2 transfer under § 25-2-105 by Acts 1997, No. 436, § 2.

This section was amended by Acts 2009, No. 218, § 1. However, Acts 2009, No. 951, §§ 1 and 2, repealed this section as amended by Acts 2009, No. 218, § 1, and reenacted this section as it existed before the amendments by Acts 2009, No. 218, § 1.

Publisher's Notes. The first sentence of Acts 1959, No. 245, § 1, abolished the Arkansas Assessment Coordination Department and transferred all functions, etc., to the Arkansas Public Service Commission.

The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23 and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the State Highway and Transportation Department, respectively. See § 23-2-201 et seq.

Amendments. The 2009 amendment substituted "Court of Appeals" for "circuit court" in (1)(B)(i)(b) and (1)(B)(ii)(b); substituted "State Highway Commission" for "Arkansas Transportation Commission" in (1)(B)(ii)(a) and (1)(B)(ii)(b); and substituted "§§ 23-2-422 – 23-2-424" for "law" in (1)(B)(i)(b).

CASE NOTES

ANALYSIS

Appellate Review.
Boundary Disputes.

Appellate Review.

Courts can only review real property assessments and reverse them and send them back to the executive department when they are clearly erroneous, manifestly excessive, or confiscatory. *Tuthill v. Arkansas County Equalization Bd.*, 303 Ark. 387, 797 S.W.2d 439 (1990).

Boundary Disputes.

The Public Service Commission does not have jurisdiction to determine the boundary between two counties arising from a change in the flow of the Arkansas River through accretion or avulsion. *Arkansas County v. Desha County*, 342 Ark. 135, 27 S.W.3d 379 (2000).

Cited: *Kansas City S. Ry. v. Arkansas Commerce Comm'n*, 230 Ark. 663, 326 S.W.2d 805 (1959).

26-24-102. Power and authority generally.

The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to have and exercise general and complete supervision and control over:

(1) The valuation, assessment, and equalization of all property, privileges, and franchises; and

(2) The several county assessors, county equalization boards, and other officers charged with the assessment or equalization of property taxes throughout the state, to the end that all assessments on property, privileges, and franchises in this state shall be made in relative proportion to the just and true value of the property, privileges, and franchises, in substantial compliance with the law.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103; Acts 1999, No. 228, § 1.

A.C.R.C. Notes. The authority of the Arkansas Public Service Commission with respect to the equalization and assess-

ment of property and the administration of tax laws, except with respect to public utilities and carriers, was transferred to

the Assessment Coordination Department by Acts 1997, No. 436. See §§ 25-28-102 and 25-28-103.

CASE NOTES

Boundary Disputes.

The Public Service Commission does not have jurisdiction to determine the boundary between two counties arising from a change in the flow of the Arkansas River through accretion or avulsion. *Arkansas County v. Desha County*, 342 Ark. 135, 27 S.W.3d 379 (2000).

Cited: *Raef v. Radio Broadcasting, Inc.*, 209 Ark. 253, 190 S.W.2d 1 (1945); *Baldwin v. Rushing*, 254 Ark. 1042, 497 S.W.2d 668 (1973); *Tuthill v. Arkansas County Equalization Bd.*, 303 Ark. 387, 797 S.W.2d 439 (1990); *Potlatch Corp. v. Arkansas City Sch. Dist.*, 311 Ark. 145, 842 S.W.2d 32 (1992).

26-24-103. Assessment of utility property.

The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to have the exclusive power of original assessment of both real and personal property used in the operating of carrier pipeline, railroad, street railroad, express, sleeping car, and intercounty bus line companies, and all telegraph, telephone, electric power, cable television, heating, gas, water, water transportation, toll bridge, or ferry, interurban, or other similar companies, associations, or corporations, commonly known as utilities, doing business or owning property in this state.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; Acts 1975, No. 175, § 1; A.S.A. 1947, § 84-103.

CASE NOTES

ANALYSIS

Cable-Services Providers.
Commercial Mobile Service Providers.
Determinations.

Cable-Services Providers.

Cable-services provider's suit seeking a tax refund under § 26-35-901 on grounds the Arkansas Public Service Commission wrongly included its intangible personal property in its ad valorem assessments was properly dismissed, as that claim should have been brought before the Commission, which had exclusive authority over such assessments and challenges thereto under this section and § 26-26-1610. *Comcast of Little Rock v. Bradshaw*, 2011 Ark. 431, — S.W.3d — (2011).

Commercial Mobile Service Providers.

The termination of the Public Service Commission's traditional regulatory authority over commercial mobile service providers did not result in the termination of the commission's tax assessment power over utilities. *Southwestern Bell Mobile Sys. v. Arkansas Pub. Serv. Comm'n*, 73 Ark. App. 222, 40 S.W.3d 838 (2001).

A commercial mobile service provider is a "telephone company" within the meaning of this section. *Southwestern Bell Mobile Sys. v. Arkansas Pub. Serv. Comm'n*, 73 Ark. App. 222, 40 S.W.3d 838 (2001).

Determinations.

Assessment at 20% of value by Public Service Commission was not arbitrary and was not shown to be arbitrary by spot

check of assessments in the state which showed a lower valuation. *Saint Louis-San Francisco Ry. v. Arkansas Pub. Serv. Comm'n*, 227 Ark. 1066, 304 S.W.2d 297 (1957).

Cited: *Raef v. Radio Broadcasting, Inc.*, 209 Ark. 253, 190 S.W.2d 1 (1945); *Baldwin v. Rushing*, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-24-104. Basis of valuation.

(a) The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to file with the county judge, county clerk, and county assessor of each county not later than ten (10) days before the time for the beginning of the assessment of property by the county assessors a certificate showing the percentage of true and full market or actual value that it has used, or will use, in valuing for taxation for that year the property the commission is required to assess.

(b) It shall be the duty of the county assessors and county equalization boards and county judges to adopt the same basis of valuation of property in their counties for the purpose of taxation as that certified by the commission.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

A.C.R.C. Notes. The authority of the Arkansas Public Service Commission with respect to the equalization and assessment of property and the administration of tax laws, except with respect to public

utilities and carriers, was transferred to the Assessment Coordination Department by Acts 1997, No. 436. See §§ 25-28-102 and 25-28-103.

Cross References. Resolution of valuation adopted by county equalization boards, § 26-27-319.

CASE NOTES

Cited: *Raef v. Radio Broadcasting, Inc.*, 209 Ark. 253, 190 S.W.2d 1 (1945); *Bald-*

win v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-24-105. Supervision of local authorities.

The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to confer with, advise, and direct all county assessors, county equalization boards, county judges, county clerks, and collectors of state and county taxes concerning their duty with respect to the revenue laws of this state.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

A.C.R.C. Notes. The authority of the Arkansas Public Service Commission with respect to the equalization and assess-

ment of property and the administration of tax laws, except with respect to public utilities and carriers, was transferred to the Assessment Coordination Department by Acts 1997, No. 436. See §§ 25-28-102 and 25-28-103.

CASE NOTES

Assessments.

The commission was authorized to direct county clerks to ignore orders of county boards of equalization directing a blanket reduction in the assessments of urban and rural real estate. Arkansas Tax

Comm'n v. Turley, 185 Ark. 31, 45 S.W.2d 859 (1932).

Cited: Raef v. Radio Broadcasting, Inc., 209 Ark. 253, 190 S.W.2d 1 (1945); Baldwin v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-24-106. Opinions of commission.

(a) The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to answer all questions that may arise in the construction of any statute affecting the assessment, equalization, or collection of taxes, in accordance with the advice and opinion of the Attorney General.

(b) Such opinion and the rules, regulations, orders, and instructions of the commission prescribed and issued in conformity therewith shall be binding upon all officers, who shall faithfully observe and obey the same unless and until they are reversed, annulled, or modified by a court of competent jurisdiction.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; Acts 1951, No. 155, § 2; A.S.A. 1947, § 84-103.

A.C.R.C. Notes. The authority of the Arkansas Public Service Commission with respect to the equalization and assess-

ment of property and the administration of tax laws, except with respect to public utilities and carriers, was transferred to the Assessment Coordination Department by Acts 1997, No. 436. See §§ 25-28-102 and 25-28-103.

CASE NOTES

Cited: Raef v. Radio Broadcasting, Inc., 209 Ark. 253, 190 S.W.2d 1 (1945); Bald-

win v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-24-107. Rules and regulations.

The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to:

(1) Prescribe from time to time such general and uniform rules and regulations and issue such orders and instructions, not inconsistent with law, as may be deemed necessary respecting the manner of the exercise of the powers and discharge of the duties of any and all taxing officials; and

(2) Require compliance with the commission's forms, rules, regulations, orders, and instructions.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

A.C.R.C. Notes. The authority of the Arkansas Public Service Commission with respect to the equalization and assess-

ment of property and the administration of tax laws, except with respect to public utilities and carriers, was transferred to the Assessment Coordination Department by Acts 1997, No. 436. See §§ 25-28-102 and 25-28-103.

CASE NOTES

Cited: Raef v. Radio Broadcasting, Inc., win v. Rushing, 254 Ark. 1042, 497 S.W.2d 209 Ark. 253, 190 S.W.2d 1 (1945); Bald- 668 (1973);

26-24-108. Extension of time.

The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to extend to any official, individual, company, association, or corporation additional time, not to exceed sixty (60) days, within which to file any report required by law to be filed with the commission, in which event the attaching or taking effect of any penalty for failure to file the report or pay any tax or fee shall be postponed accordingly when deemed necessary or advisable.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

CASE NOTES

Cited: Raef v. Radio Broadcasting, Inc., win v. Rushing, 254 Ark. 1042, 497 S.W.2d 209 Ark. 253, 190 S.W.2d 1 (1945); Bald- 668 (1973).

26-24-109. Suits.

The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to direct and approve suits to be instituted by the Attorney General, prosecuting attorneys, or attorneys specially employed for such purpose for the collection of any taxes or penalties due the state or any subdivisions.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

CASE NOTES

Authority.

This section places authority for the institution of suits against corporations for collection of back taxes with the Public Service Commission. State ex rel. Attorney Gen. v. Standard Oil Co., 179 Ark. 280, 16 S.W.2d 581 (1929).

Cited: Raef v. Radio Broadcasting, Inc., 209 Ark. 253, 190 S.W.2d 1 (1945); Baldwin v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-24-110. Information from public officials.

The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to require any public official in this state to report information as to the valuation, assessment, and equalization of property, privileges, or

franchises, the collection of taxes, receipts from licenses and other sources, the method of taxation, value of franchises, or intangible property or assets subject to taxation, and such other information as may be needful in the work of the commission, in such form and upon such blanks as the commission may prescribe.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

CASE NOTES

Cited: Raef v. Radio Broadcasting, Inc., win v. Rushing, 254 Ark. 1042, 497 S.W.2d 209 Ark. 253, 190 S.W.2d 1 (1945); Bald- 668 (1973).

26-24-111. Information from private persons or corporations.

The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to require individuals, partnerships, associations, and corporations, and the agents, officers, and employees thereof, to furnish information concerning their capital, funded or otherwise, gross receipts, net profits or income, excess profits, current assets and liabilities, values or franchises, value of property, earnings, operating and other expenses, bonds, deeds, conduct of business, and all other facts, records, books, papers, documents, and other information of any kind or character demanded which may be useful, in order to enable the commission to ascertain the value and relative burden to be borne by every kind of property in this state.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

CASE NOTES

Cited: Raef v. Radio Broadcasting, Inc., win v. Rushing, 254 Ark. 1042, 497 S.W.2d 209 Ark. 253, 190 S.W.2d 1 (1945); Bald- 668 (1973).

26-24-112. Witnesses.

(a) The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to summon witnesses to appear, give testimony, and produce records, books, papers, documents, and all other information of any kind or character required relating to any matter which the commission shall have authority to investigate and determine.

(b)(1)(A) Witnesses may be summoned by ordinary subpoena or by subpoena duces tecum issued by any member of the commission, or by the secretary, in the name of the commission, directed to any county sheriff of Arkansas, and returnable to the commission, which

subpoena may be served in like manner as process issued out of any circuit court; or

(B) The subpoenas may be served by registered mail, addressed to the witness with return receipt demanded.

(2) In either case, the subpoenas must be served at least five (5) days previously to the day named therein for the appearance of the witness.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

CASE NOTES

Cited: Raef v. Radio Broadcasting, Inc., win v. Rushing, 254 Ark. 1042, 497 S.W.2d 209 Ark. 253, 190 S.W.2d 1 (1945); Bald- 668 (1973).

26-24-113. Depositions.

The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to cause the deposition of witnesses residing within or without the state, or absent therefrom, to be taken upon notice to the interested party, if any, in like manner that depositions of witnesses are taken in civil actions in the circuit court, in any matter which the commission may have authority to investigate or determine.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

CASE NOTES

Cited: Raef v. Radio Broadcasting, Inc., win v. Rushing, 254 Ark. 1042, 497 S.W.2d 209 Ark. 253, 190 S.W.2d 1 (1945); Bald- 668 (1973).

26-24-114. Appointment of agents — Penalty for disclosing information.

(a)(1) For the purpose of making any investigation of any company, firm, corporation, person, association, copartnership, or public utility, subject to the provisions of the laws which the commission is required to administer, the Arkansas Public Service Commission may appoint, by an order in writing, an agent whose duties shall be prescribed in that order.

(2) In the discharge of his or her duties, the agent shall have every power of an inquisitorial nature granted by the law to the commission and the same powers as a notary public, with regard to the taking of depositions; and all powers given by law to a notary public relative to deposition are given to the agent.

(b) Except in his or her report to the commission, or when called on to testify in any court or proceedings, any agent who shall divulge any information acquired by him or her in respect to the transactions,

property, or business of any company, firm, or corporation, person, association, copartnership, or public utility, while acting or claiming to act under such order, shall be fined not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100) and shall thereafter be disqualified from acting as agent or in any other capacity under appointment or employment of the commission.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

CASE NOTES

Cited: Raef v. Radio Broadcasting, Inc., win v. Rushing, 254 Ark. 1042, 497 S.W.2d 209 Ark. 253, 190 S.W.2d 1 (1945); Bald- 668 (1973).

26-24-115. Investigation by agents.

(a) The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to conduct any number of investigations, contemporaneously, through different agents, and may delegate to any agent the taking of all testimony bearing upon any investigation or hearing.

(b) The decision of the commission shall be based upon its examination of all testimony and records.

(c) The recommendations made by an agent shall be advisory only and shall not preclude the taking of further testimony nor further investigation, if the commission so orders.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

CASE NOTES

Cited: Raef v. Radio Broadcasting, Inc., win v. Rushing, 254 Ark. 1042, 497 S.W.2d 209 Ark. 253, 190 S.W.2d 1 (1945); Bald- 668 (1973).

26-24-116. Investigations by commission.

The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to:

(1) Visit in a body or singly, or by authorized agents, the several counties in this state for the purpose of investigating the work and methods of county assessors, or other officers or boards charged with the duty of administering the tax laws;

(2) Examine carefully into all cases where evasion or violation of the tax laws is alleged, complained of, or discovered, and to ascertain wherein existing laws are defective, or are improperly or negligently administered; and

(3) Report the result of the investigation and the facts ascertained to the Governor from time to time when so required by him or her.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

A.C.R.C. Notes. The authority of the Arkansas Public Service Commission with respect to the equalization and assess-

ment of property and the administration of tax laws, except with respect to public utilities and carriers, was transferred to the Assessment Coordination Department by Acts 1997, No. 436. See §§ 25-28-102 and 25-28-103.

CASE NOTES

Cited: Raef v. Radio Broadcasting, Inc., 209 Ark. 253, 190 S.W.2d 1 (1945); Bald-

win v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-24-117. Omitted property.

The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to cause to be placed upon the assessment rolls omitted property which may be discovered to have escaped for any reason assessment and taxation and to correct any errors that may be found on the assessment rolls and cause the proper entry to be made thereon.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

A.C.R.C. Notes. The authority of the Arkansas Public Service Commission with respect to the equalization and assess-

ment of property and the administration of tax laws, except with respect to public utilities and carriers, was transferred to the Assessment Coordination Department by Acts 1997, No. 436. See §§ 25-28-102 and 25-28-103.

CASE NOTES

Cited: Raef v. Radio Broadcasting, Inc., 209 Ark. 253, 190 S.W.2d 1 (1945); Bald-

win v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-24-118. Meetings of assessors.

(a) The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to call a group meeting of two (2) or more county assessors at such time and place as it may designate, due notice of which shall be given by the commission.

(b)(1) For attending these meetings, county assessors shall receive no compensation but shall be reimbursed for their actual and necessary expenses in attending the meeting, including only the fare necessarily spent in going to and returning from the place of the meeting.

(2) When such claims are verified by oath and approved by the commission or any member thereof, they shall be presented to the county court which shall make an order showing the amount due and directing the county clerk to draw his or her warrant on the county treasurer to be paid out of any general funds belonging to the county.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

A.C.R.C. Notes. The authority of the Arkansas Public Service Commission with respect to the equalization and assess-

ment of property and the administration of tax laws, except with respect to public utilities and carriers, was transferred to

the Assessment Coordination Department by Acts 1997, No. 436. See §§ 25-28-102 and 25-28-103.

CASE NOTES

Cited: Raef v. Radio Broadcasting, Inc., 209 Ark. 253, 190 S.W.2d 1 (1945); Baldwin v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-24-119. Investigation of tax systems.

The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to:

- (1) Investigate the revenue systems of other states;
- (2) Thoroughly inform themselves upon the subject of taxation and of the progress made in other states and countries in improving their tax systems;
- (3) Formulate and recommend such legislation as may be deemed expedient to forestall evasion of existing tax laws; and
- (4) Secure just and equal taxation and improvements in the system of taxation in Arkansas.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

CASE NOTES

Cited: Raef v. Radio Broadcasting, Inc., 209 Ark. 253, 190 S.W.2d 1 (1945); Baldwin v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-24-120. Consultation with Governor.

The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to consult and confer with the Governor upon the subject of taxation and the administration of the revenue laws, and upon progress of the work of the commission, and to furnish him or her from time to time such information as he or she may require.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

CASE NOTES

Cited: Raef v. Radio Broadcasting, Inc., 209 Ark. 253, 190 S.W.2d 1 (1945); Baldwin v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-24-121. Biennial report.

The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to transmit to the Governor, thirty (30) days before the convening of the General Assembly, a written report showing in tabular form all the taxable property in the state and the assessed value thereof, together with suggestions of such measures as the commission may formulate and recommend for the consideration of the General Assembly.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

A.C.R.C. Notes. The authority of the Arkansas Public Service Commission with respect to the equalization and assess-

ment of property and the administration of tax laws, except with respect to public utilities and carriers, was transferred to the Assessment Coordination Department by Acts 1997, No. 436. See §§ 25-28-102 and 25-28-103.

CASE NOTES

Cited: Raef v. Radio Broadcasting, Inc., 209 Ark. 253, 190 S.W.2d 1 (1945); Baldwin v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-24-122. Appearance of witnesses.

(a)(1) In case any witness who has been summoned to testify before the Arkansas Public Service Commission shall fail or refuse to testify to or make answer to any material question relating to any matter under investigation or to produce any records, books, papers, or other documents in his or her custody or control when required to do so, any circuit court, or any circuit judge thereof, upon application of any member of the commission, shall issue an attachment for the witness and compel him or her to comply with the summons and to attend before the commission and produce the books, documents, papers, or records and give testimony upon matters about which he or she may be lawfully interrogated.

(2) The circuit court, or circuit judge thereof, may punish a witness for contempt as in the case of disobedience of a like subpoena issued from the circuit court for the refusal to testify in any cases pending therein.

(b)(1) No witness shall be excused from attending or testifying or from producing books, papers, records, accounts, and other documents before the commission, or in obedience to its subpoena, on the ground or for the reason that the testimony, documentary or otherwise, required of him or her may tend to incriminate him or her or subject him or her to a penalty or forfeiture.

(2) No person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may testify or produce evidence, documentary or otherwise, before the commission, or in obedience to its subpoena. However, no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

(c)(1) Every witness who shall appear before the commission by its order shall receive for his or her attendance the fees and mileage allowed by law for witnesses in civil cases in circuit courts, which shall be audited and paid by the state in the same manner as other expenses of the commission are audited and paid, upon the presentation of the proper voucher sworn to by the witness and approved by the commission or the chair thereof.

(2) Witnesses summoned at the instance of parties other than the commission shall be paid by the party causing the witnesses to be summoned.

History. Acts 1927, No. 129, §§ 26-28; Pope's Dig., §§ 2052-2054; A.S.A. 1947, §§ 84-104 — 84-106.

RESEARCH REFERENCES

Ark. L. Rev. Rules of Evidence in Administrative Proceedings, 15 Ark. L. Rev. 138.

26-24-123. Appeal of actions or orders.

(a) Any taxpayer aggrieved by the action or order of the Arkansas Public Service Commission respecting the assessment or equalization of property shall have the right of appeal to the circuit court and thence to the Supreme Court.

(b)(1) All appeals from the commission involving the assessment or equalization of property locally assessed may be either to the circuit court of the county where the property is located or the Pulaski County Circuit Court.

(2) All appeals involving the assessment or equalization of property, the original assessment of which has been fixed by the commission, shall be to the Pulaski County Circuit Court.

(c) All appeals shall be taken within thirty (30) days from the date of the action or order appealed from by filing a written notice with the commission and shall be tried de novo.

(d) No appeal shall lie from the action or order of the commission on original assessments unless the property owner shall have first exhausted his or her remedy before the commission by way of petition for review.

History. Acts 1949, No. 191, § 8; 1953, No. 388, § 3; A.S.A. 1947, § 84-115; Acts 2009, No. 218, § 2; 2009, No. 951, §§ 1, 3.

A.C.R.C. Notes. This section was amended by Acts 2009, No. 218, § 2. However, Acts 2009, No. 951, §§ 1 and 3, repealed this section as amended by Acts 2009, No. 218, § 2, and reenacted this section as it existed before the amendments by Acts 2009, No. 218, § 2.

The authority of the Arkansas Public Service Commission with respect to the equalization and assessment of property and the administration of tax laws, except with respect to public utilities and carriers, was transferred to the Assessment Coordination Department by Acts 1997, No. 436. See §§ 25-28-102 and 25-28-103.

Amendments. The 2009 amendment rewrote the section.

CASE NOTES

ANALYSIS

Construction.
Burden of Proof.
Evidence.
Judicial Review.
Scope of Judicial Authority.

Construction.

Section 23-2-423 and this section are easily distinguishable, inasmuch as § 23-2-423 pertains to public utility regulatory matters and this section governs judicial review on Public Service Commission decisions concerning taxation matters. *Arkansas Elec. Coop. Corp. v. Arkansas Pub. Serv. Comm'n*, 307 Ark. 171, 818 S.W.2d 935 (1991).

Burden of Proof.

The burden of proof is on the protestant to show that the property assessment is manifestly excessive or clearly erroneous or confiscatory. *Potlatch Corp. v. Arkansas City Sch. Dist.*, 311 Ark. 145, 842 S.W.2d 32 (1992).

Evidence.

An appeal from a ruling by the Public Service Commission is not the type that

calls for the reception of new evidence, but is the type in which review is confined to the record made before the administrative body. *Southwestern Bell Mobile Sys. v. Arkansas Pub. Serv. Comm'n*, 73 Ark. App. 222, 40 S.W.3d 838 (2001).

Judicial Review.

Courts can only review assessments, and reverse them, and send them back to the executive department when they are clearly erroneous, manifestly excessive, or confiscatory. *Potlatch Corp. v. Arkansas City Sch. Dist.*, 311 Ark. 145, 842 S.W.2d 32 (1992).

Scope of Judicial Authority.

Because of the separation of powers doctrine, it is not within the province of the state courts to assess property. *Potlatch Corp. v. Arkansas City Sch. Dist.*, 311 Ark. 145, 842 S.W.2d 32 (1992).

Cited: *Kansas City S. Ry. v. Arkansas Commerce Comm'n*, 230 Ark. 663, 326 S.W.2d 805 (1959).

CHAPTER 25

LEVY OF TAXES

SECTION.

- 26-25-101. Limitation on counties.
- 26-25-102. Limitation on cities and towns.
- 26-25-103. Basis of city and town levies.
- 26-25-104. State levy in cities one mile from state line.

SECTION.

- 26-25-105. Objections to levy.
- 26-25-106. Use of voluntary tax for other purposes.
- 26-25-107. Ordinance.
- 26-25-108. Sample forms and ordinances.

Cross References. Adjustment of taxes, § 26-26-401 et seq.

Limitation on levy by state, Ark. Const., Art. 16, § 8.

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

Acts 1957, No. 201, § 3: Mar. 11, 1957. Emergency clause provided: "It has been found and declared by the General Assem-

bly of the State of Arkansas that the persons residing in the cities and incorporated towns described in Section 1 hereof, are being unjustly taxed and that the merchants in such towns are losing much trade due to the lower tax levy in nearby cities. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the

public peace, health, safety and welfare shall be in full force and effect from and after its passage and approval."

Acts 2007, No. 181, § 45: January 1, 2008.

RESEARCH REFERENCES

Am. Jur. 72 Am. Jur. 2d, State Tax., § 704 et seq. **C.J.S.** 84 C.J.S., Tax., § 349 et seq.

26-25-101. Limitation on counties.

It shall be unlawful for the county court to levy on the taxable property of the county in any one (1) year a greater percentage rate than is authorized in this section:

(1) For all county purposes, not exceeding five (5) mills on the dollar; and

(2) For paying indebtedness existing at the time of the adoption of the present Arkansas Constitution, not exceeding five (5) mills on the dollar.

History. Acts 1883, No. 114, § 8, p. 199; C. & M. Dig., § 9863; Pope's Dig., § 13611; A.S.A. 1947, § 84-302.

A.C.R.C. Notes. The Arkansas Constitution in effect in 1883 was the Arkansas Constitution of 1874. This constitution was ratified by the people October 13, 1874, and its adoption was proclaimed October 30, 1874.

Publisher's Notes. Acts 1980 (1st Ex. Sess.), No. 64, provided for a one-time

millage rate adjustment for county, community college district and municipal ad valorem taxes, and school district taxes in order to avoid excessive taxation which might result from the court ordered reappraisal of taxable property (Arkansas Pub. Serv. Comm'n v. Pulaski County Bd. of Equalization, 266 Ark. 64, 582 S.W.2d 942 (1979)), and the procedure for making this one-time millage rate adjustment.

CASE NOTES

ANALYSIS

County Bonds.
Excessive Levy.
Existing Indebtedness.
Judicial Districts.
Schools.

County Bonds.

Where county bonds had been issued under authority of law and where at the same time the law had directed a tax to be levied for their protection or where there was a general law authorizing and directing a tax in all like cases applicable to such bonds, the law became a part of the contract and the holder had a right to look to the taxing provision as a part of his security and to demand at the proper time that it be exercised in his favor. Brodie v.

McCabe, 33 Ark. 690 (1878) (decision under prior law).

Excessive Levy.

An excessive levy vitiated the whole tax and a court, upon a bill to enjoin, could not treat as valid so much of the levy as was not in excess of the rate authorized by law. Worthen v. Badgett, 32 Ark. 496 (1877) (decision under prior law).

Existing Indebtedness.

Where county court levied tax of five mills for purpose of paying indebtedness existing at time of adoption of Arkansas Constitution, but on subsequent day of term modified its order and appropriated whole of the levy to payment of a judgment rendered against it in federal court, conceding the latter order to have been an

error, it was not void for want of jurisdiction of the subject matter, and where no appeal was taken, it could not subsequently be corrected. *Graham v. Parham*, 32 Ark. 676 (1878) (decision under prior law).

When county court levied a tax of five mills to pay indebtedness existing at time of adoption of the Arkansas Constitution of 1874, it exhausted its power to levy for that purpose and could not make an additional levy for a particular debt. *Cope v. Collins*, 37 Ark. 649 (1881) (decision under prior law).

26-25-102. Limitation on cities and towns.

(a) The amount of taxes which may be levied for general purposes in any one (1) year by the constituted authorities of any city or town under the provisions of Arkansas Constitution, Article 12, Section 4, may equal, but not exceed, the maximum amount of levy at any time fixed under this section of the Arkansas Constitution.

(b) This limitation shall not be construed to prohibit assessments on property adjacent to local improvements made in any city or town for the purpose of paying the costs and damages occasioned thereby.

History. Acts 1883, No. 114, § 10, p. 199; C. & M. Dig., § 9864; Pope's Dig., § 13612; Acts 1963, No. 480, § 1; A.S.A. 1947, § 84-303.

Judicial Districts.

Although a county is divided into two judicial districts, a different tax levy in each district is invalid. *Hutchinson v. Ozark Land Co.*, 57 Ark. 554, 22 S.W. 173 (1893) (decision under prior law).

Schools.

County court had no authority to levy school tax without return of election. *Hodgkin v. Fry*, 33 Ark. 716 (1878) (decision under prior law).

Cited: *County Bd. of Educ. v. Austin*, 169 Ark. 436, 276 S.W. 2 (1925).

Publisher's Notes. As to the one-time millage rate adjustment for taxes, see "Publisher's Notes" to § 26-25-101.

CASE NOTES

ANALYSIS

Municipal Bonds.
Tax on Property.

Municipal Bonds.

Where municipal bonds had been issued under authority of law and where at the same time the law had directed a tax to be levied for their protection or where there was a general law authorizing and directing a tax in all like cases applicable to such bonds, the law became a part of the contract and the holder had a right to look to the taxing provision as a part of his security and to demand at the proper time that it be exercised in his favor. *Brodie v. McCabe*, 33 Ark. 690 (1878) (decision under prior law).

Tax on Property.

When reading this section and § 26-25-103 in conjunction with Ark. Const., Art. 12, it is clear that these enactments have reference to taxes on property. *Holt v. City of Maumelle*, 302 Ark. 51, 786 S.W.2d 581 (1990).

City ordinance imposing charge for police and fire protection and street lighting was not a property tax within the meaning of Ark. Const., Art. 12, § 4 or this section and § 26-25-103, where ordinance placed tax on the "resident" or "occupant" of the property as opposed to a tax on the "residence" or upon the "real property," and was a tax not otherwise prohibited by law pursuant to § 26-73-103(a). *Holt v. City of Maumelle*, 302 Ark. 51, 786 S.W.2d 581 (1990).

26-25-103. Basis of city and town levies.

All levies of taxes in cities and towns shall be based upon the appraisement of the county assessor, as equalized for the levy of state and county taxes, and placed upon the tax book by the county clerk. They shall be collected in the same manner, and by the same person, that county taxes are collected.

History. Acts 1883, No. 114, § 11, p. 199; C. & M. Dig., § 9865; Pope's Dig., § 13613; A.S.A. 1947, § 84-304.

CASE NOTES**Tax on Property.**

When reading § 26-25-102 and this section in conjunction with Ark. Const., Art. 12, it is clear that these enactments have reference to taxes on property. *Holt v. City of Maumelle*, 302 Ark. 51, 786 S.W.2d 581 (1990).

City ordinance imposing charge for police and fire protection and street lighting was not a property tax within the mean-

ing of Ark. Const., Art. 12, § 4 or § 26-25-102 and this section where ordinance placed tax on the "resident" or "occupant" of the property as opposed to a tax on the "residence" or upon the "real property," and was a tax not otherwise prohibited by law pursuant to § 26-73-103(a). *Holt v. City of Maumelle*, 302 Ark. 51, 786 S.W.2d 581 (1990).

26-25-104. State levy in cities one mile from state line.

The rate of all taxes levied by the State of Arkansas, not including county, city, and other local tax levies, in cities and incorporated towns whose corporate limits on March 11, 1957, extend to within one (1) mile of the corporate limits of an Arkansas city which adjoins a city in another state and is separated therefrom only by a state line, shall be at the rate at which the tax is levied and collected in the Arkansas city which adjoins a city in another state and is separated therefrom only by a state line.

History. Acts 1957, No. 201, § 1; A.S.A. 1947, § 84-307.

A.C.R.C. Notes. Arkansas Constitu-

tion, Amendment 47, prohibits the state from levying an ad valorem tax upon property.

26-25-105. Objections to levy.

(a)(1) Any person having real or personal property assessed for taxation may appear in person or by attorney before the county court, at the time of the levy of taxes by it, or at the succeeding term thereafter, and by petition or remonstrance, object to the levy of any specific tax for illegality, and may by sworn petition, set forth and show any facts upon which the illegality rests.

(2) If the petition is based upon facts, it shall be the duty of the county court to determine both the law and the facts presented, and for that purpose, it shall hear any testimony offered.

(3) If the county court should rule against the objection so presented, the party objecting to the levy may appeal from the ruling to the circuit

court of the county. Upon giving bond within ten (10) days, with good and sufficient security, in double the amount of specific tax levied upon the property of the party objecting, subject to the approval of the circuit court, and conditioned for the payment of the tax, should it be decided to have been lawfully levied, it shall operate as a supersedeas of the collection of the tax.

(b)(1) The bond shall not operate to prevent the tax being placed upon the tax book.

(2) The bond shall be given to the State of Arkansas.

(3) In the event the levy shall finally be declared illegal, the judgment shall operate as an acquittal to the county collector and his or her securities for the noncollection of the tax.

(4) If the tax is finally declared legal, the county collector shall immediately proceed to collect it as in other cases, or by action on the appeal bond.

(5) Any taxpayer feeling himself or herself aggrieved by any such levy may, at any time before the returning of delinquent taxes by the county collector for that year, appeal as provided in this section.

(6) Any person interested in the levy of the tax may resist the petition to prevent a levy, either before the county court or in the circuit court on appeal.

(7) In all cases where an appeal is taken, the county clerk shall enter on the tax books, opposite the name of the party, tract, or lot of land, the supersedeas of the specific tax.

(c)(1) The county court shall employ counsel to attend before it at the hearing, and, should it be appealed to the circuit court, the prosecuting attorney and, if to the Supreme Court, the Attorney General, shall appear in the interest and behalf of the levy of the tax.

(2) The real or personal property upon which the illegal specific tax as alleged to have been levied shall not be withheld from sale on account of any taxes for any purpose due or to become due upon it and which has not been paid as provided by law, and against the collection of which no petition has been filed.

History. Acts 1883, No. 114, § 12, p. 199; C. & M. Dig., §§ 9870-9872; Pope's Dig., §§ 13619-13621; A.S.A. 1947, § 84-306.

Cross References. Right to institute suit to prevent illegal exactions, Ark. Const., Art. 16, § 13.

RESEARCH REFERENCES

Ark. L. Rev. Taxpayers' Suits to Prevent Illegal Exactions in Arkansas, 8 Ark. L. Rev. 129.

CASE NOTES

ANALYSIS

Excessive Taxes.

Injunctions.

Excessive Taxes.

One asking relief against excessive taxes should tender amount of taxes legally due. *Wells, Fargo & Co. Express v. Crawford County*, 63 Ark. 576, 40 S.W. 710 (1897).

Injunctions.

One is entitled to an injunction against the collection of an illegal or unauthorized tax. *Merwin v. Fussell*, 93 Ark. 336, 124 S.W. 1021 (1910).

Cited: *Chicago, R.I. & P. Ry. v. Brazil*, 166 Ark. 246, 266 S.W. 66 (1924); *Paschal v. Munsey*, 168 Ark. 58, 268 S.W. 849 (1925).

26-25-106. Use of voluntary tax for other purposes.

(a) Whenever the electors of any county of this state may levy a voluntary tax, it shall be unlawful for the county judge, the county court, or any other county official to use or allocate any moneys derived from any voluntary tax for purposes other than for which it was levied and collected.

(b) Any county official violating the provisions of this section shall, upon conviction, be removed from office.

History. Acts 1967, No. 423, §§ 1, 2; A.S.A. 1947, §§ 84-308, 84-309.

26-25-107. Ordinance.

(a)(1) Every city or county that adopts an ordinance levying a local sales and use tax which is collected by the Director of the Department of Finance and Administration shall submit the ordinance to the director at least forty-five (45) days prior to the election on the levy.

(2) The director shall review the ordinance to determine if the proposed levy complies with all statutory requirements and limitations, including a separate levy of the sales and use tax, and an authorized sales or use tax rate.

(b)(1) The director shall approve or reject the ordinance and provide written notice to the city or county within fifteen (15) days of receipt of the ordinance.

(2)(A) If the ordinance is rejected, the director shall note the defects.

(B) If the ordinance is rejected and the city or county fails to correct the noted defects, any tax levied by the defective ordinance shall not be collected by the director.

(c) Whenever a special election is called for the purpose of submitting an initiated measure which levies a city or county sales and use tax to be collected by the director, the county board of election commissioners shall submit the initiated measure to the director and the provisions of subsections (a) and (b) of this section shall apply.

(d) No ordinance or initiated measure shall be deemed invalid because of the failure to submit the ordinance or measure to the

director or to use a sample form, and such failure shall not constitute a cause of action to invalidate an ordinance or initiated measure.

History. Acts 1999, No. 1289, § 1;
2007, No. 181, § 10.

26-25-108. Sample forms and ordinances.

(a) The Arkansas Municipal League, the Association of Arkansas Counties, and the Department of Finance and Administration may jointly develop sample forms and ordinances for levying local sales and use taxes which comply with all statutory requirements and limitations.

(b) The sample forms and ordinances will be reviewed regularly in order to comply with changes in the law.

History. Acts 1999, No. 1289, § 2.

CHAPTER 26 ASSESSMENT OF TAXES

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. PENALTIES AND OFFENSES GENERALLY.
3. ADMINISTRATION GENERALLY.
4. ADJUSTMENT OF TAXES.
5. COUNTY ASSESSORS.
6. PROFESSIONAL APPRAISERS. [REPEALED.]
7. LISTS — ABSTRACTS — BOOKS — RECORDS.
8. SURVEYS AND PLATS.
9. LISTING OF PROPERTY FOR ASSESSMENT.
10. EXEMPT PROPERTY.
11. ASSESSMENT OF PROPERTY GENERALLY.
12. VALUATION OF PROPERTY.
13. REASSESSMENT OF PROPERTY.
14. TANGIBLE PERSONAL PROPERTY.
15. CORPORATIONS AND FINANCIAL INSTITUTIONS.
16. UTILITIES AND CARRIERS GENERALLY.
17. PRIVATE CAR COMPANIES.
18. CABLE TELEVISION SYSTEMS.
19. UNIFORM SYSTEM OF REAL PROPERTY ASSESSMENT.
20. COORDINATION OF UNIFORM REPORTING OF COUNTY PROPERTY TAX INFORMATION. [REPEALED.]

Cross References. Appeal to circuit court, § 26-24-123. justment of assessment, § 26-27-317.
Objections to tax levy, § 26-25-105.
Application by property owner for ad-

RESEARCH REFERENCES

ALR. Situs of tangible personal property for purposes of property taxation. 2 A.L.R.4th 432. Situs of aircraft, rolling stock, and vessels for purposes of property taxation. 3 A.L.R.4th 837.

Standing of one taxpayer to complain of underassessment or nonassessment of property of another for state and local taxation. 9 A.L.R.4th 428.

Requirement of full-value real property taxation assessments. 42 A.L.R.4th 676.

Am. Jur. 72 Am. Jur. 2d, State Tax., § 704 et seq.

C.J.S. 84 C.J.S., Tax., § 390 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

26-26-101. Attorney General as chief

counsel in tax assessment review.

Effective Dates. Acts 1980 (2nd Ex. Sess.), No. 5, § 3: May 8, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present statutes governing appeals from assessments made by the Tax Division of the Public Service Commission do not provide a specific procedure for appellate review of decisions of the Public Service Commission and the Transportation Commission which modify property tax assessments made by the Tax Division of the Public Service Commission; that the Attorney General's participation in appeals of property tax assessments made by the Tax Division of the Public Service Commission is necessary to ensure that Public Service Commission or Transportation Commission decisions in such cases can be appealed by the Tax Division and

that the Attorney General should be designated as chief counsel for the Tax Division when Tax Division property tax assessments are appealed to the Public Service Commission or the Transportation Commission and empowered to appeal orders from the Public Service Commission or the Transportation Commission which modify Tax Division property tax assessments; and that the immediate passage of this Act is necessary to ensure that Public Service Commission or Transportation Commission decisions affecting property tax assessments in 1980 and thereafter can be appealed. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

26-26-101. Attorney General as chief counsel in tax assessment review.

(a) When any person, firm, company, copartnership, association, or corporation whose property is required by law to be assessed for ad valorem taxation by the Tax Division of the Arkansas Public Service Commission shall file a petition with the Arkansas Public Service Commission or the Arkansas Transportation Commission [abolished] seeking review of the assessment, the chair of the commission having jurisdiction over the review shall, within ten (10) days of the filing of the petition, give notice to the Attorney General.

(b)(1) Upon receipt of notice from the Arkansas Public Service Commission or the Arkansas Transportation Commission [abolished] that a person, firm, company, copartnership, association, or corporation whose property is required by law to be assessed for ad valorem

taxation by the division has filed a petition for review of the assessment, the Attorney General shall undertake legal representation of the division and shall serve as chief counsel for the division during the pendency of the review before the commission having jurisdiction of the matter.

(2) The Attorney General shall be assisted by the division's legal counsel and on appeals to the Arkansas Transportation Commission [abolished] by the Arkansas Transportation Commission's [abolished] legal counsel.

(3) If any assessment made by the division is modified on review by order of the commission having jurisdiction of the matter, the Attorney General, after consulting with the administrator of the division, shall be empowered to appeal the commission order to the Pulaski County Circuit Court and shall continue to serve as chief counsel for the division during the appellate process, with the authority to appeal subsequent court orders.

History. Acts 1980 (2nd Ex. Sess.), No. 5, §§ 1, 2; A.S.A. 1947, §§ 84-490, 84-491.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However,

Acts 1989 (1st Ex. Sess.), No. 67, § 23 and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the State Highway and Transportation Department, respectively. See § 23-2-201 et seq.

SUBCHAPTER 2 — PENALTIES AND OFFENSES GENERALLY

SECTION.

26-26-201. Delinquent assessments.

26-26-202. Refusal to give name or description of property.

Effective Dates. Acts 1919, No. 147, § 18: approved Mar. 1, 1919. Emergency clause provided: "That Act 234 of the Acts of 1917 and Act 124 of the Acts of 1913, and all other laws in conflict herewith, are hereby repealed, and this Act, being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this Act shall take effect and be in force from and after its passage."

Acts 1929, No. 111, § 14: approved Mar. 9, 1929. Emergency clause provided: "All laws and parts of laws in conflict herewith are hereby repealed, and this act being necessary for the immediate preservation

of the public peace, health and safety, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage."

Acts 1929, No. 172, § 4: approved Mar. 22, 1929. Emergency clause provided: "It is ascertained and hereby declared that the present system of assessing property for taxation is defective, unfair, unjust and inequitable; that the changes herein contemplated are necessary in order to bring about a more equitable distribution of the costs of government, so that the immediate operation of the Act is essential for the preservation of the public peace, health and safety, and an emer-

agency is therefore declared, and this Act shall take effect and be in force from and after its passage.”

26-26-201. Delinquent assessments.

(a)(1)(A) There shall be a penalty of ten percent (10%) of all taxes due on all persons and property delinquent in assessment.

(B) Where the penalty of ten percent (10%) of the amount of all taxes due shall amount to less than one dollar (\$1.00), the penalty shall be arbitrarily fixed at one dollar (\$1.00).

(2)(A) All persons and property not listed for assessment with the county assessor on or before May 31 of the year in which the assessment is required, as provided by this chapter, shall be deemed to be delinquent in assessment, and the county assessor shall so designate it on his or her records that the county clerk may know each item of property and all persons so delinquent.

(B) It shall be the duty of the county officer designated by the county quorum court under § 26-28-102 to affix and extend the penalty provided in this section against each item of property and all persons delinquent in assessment.

(3) The penalty shall be collected by the county collector and shall be paid into the county general fund.

(b) Between January 1 and June 5 of each year, each county assessor shall file with the Treasurer of State a sworn statement that he or she will comply with subsection (a) of this section. If a county assessor fails to file the statement by June 5, then the Treasurer of State shall withhold county turnback to that county until the statement is received by the Treasurer of State.

(c) If the neglect is willful, the delinquent shall be deemed guilty of a misdemeanor and shall be fined in any sum not more than one thousand dollars (\$1,000).

(d)(1) In addition to the penalties for not assessing, delinquent persons shall be required to pay an additional fifty cents (50¢) for each list, which shall go to the county assessor.

(2) This additional sum shall be collected by the county collector in the usual manner.

History. Acts 1919, No. 147, § 7; C. & M. Dig., § 9898; Acts 1929, No. 111, §§ 11, 12; 1929, No. 172, § 11; Pope’s Dig., §§ 13635, 13636, 13661; A.S.A. 1947, §§ 84-438 — 84-440; Acts 1987, No. 153, § 1; 1991, No. 860, § 1; 2011, No. 617, § 1.

Amendments. The 2011 amendment, in (a)(2)(B), substituted “county officer designated by the quorum court under § 26-28-102” for “clerk” and added “in assessment” at the end; and deleted “by him” preceding “paid into” in (a)(3).

CASE NOTES

Cited: Baldwin v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-26-202. Refusal to give name or description of property.

(a) It shall be unlawful for any person to refuse to give the county assessor or the appointed deputy his or her name and a complete and accurate description of his or her personal and real property, together with the location and value of it.

(b) Any person so refusing, upon conviction, shall be guilty of a violation and shall be fined in any sum not less than ten dollars (\$10.00) and not more than twenty-five dollars (\$25.00).

History. Acts 1929, No. 172, § 14; Pope's Dig., § 13665; A.S.A. 1947, § 84-443; Acts 2005, No. 1994, § 165.

CASE NOTES

Cited: Rottinghaus v. Holder, 261 Ark. 634, 550 S.W.2d 462 (1977).

SUBCHAPTER 3 — ADMINISTRATION GENERALLY

SECTION.

26-26-301. Duties of officers.

26-26-302. Assessment records to be kept current.

26-26-303. Percentage of value to be used in appraisal.

26-26-304. Ratio of assessed value to market value in the assessment year that reappraised values are placed on the assessment rolls.

26-26-305. [Repealed.]

26-26-306. Countywide reappraisal of property.

SECTION.

26-26-307. Completion of reappraisal — Suspension of penalties.

26-26-308. Rules and regulations.

26-26-309. [Repealed.]

26-26-310. Certification of amount of property tax reduction.

26-26-311. Appraisal completion on the date the county collector's books are open for collection on the newly appraised value.

Effective Dates. Acts 1955, No. 153, § 15: Mar. 7, 1955. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that great inequalities and discriminations in property assessments now exist throughout the State, that there is urgent need for equalization, and that only by the enactment of this bill can there be provided a more efficient and adequate administration of the tax laws. Therefore, an emergency is hereby de-

clared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from and after the date of its passage and approval."

Acts 1959, No. 31, § 2: approved Feb. 13, 1959. Emergency clause provided: "It has been found and is declared by the General Assembly of Arkansas that under the present reappraisal law of Arkansas, funds would be withheld beginning in April of 1959; that it has been impossible

for several counties of this State to comply with the reappraisal requirement due to a lack of sufficient technically skilled personnel to handle the reappraisal; that the withholding of State funds will cause a shortened school term for many schools of this State to the deprivation of the school children of Arkansas; that the General Assembly is desirous of maintaining the full nine months school term; and that this act is necessary to enable the schools to remain open for the full term. Therefore, an emergency is declared to exist and this act being necessary for the public peace, health and safety shall take effect and be in full force from and after the date of its passage."

Acts 1959, No. 244, § 2: Mar. 25, 1959. Emergency clause provided: "The General Assembly does hereby make the following findings: (1) That Section 12 of Act 153 of 1955, as amended will require the withholding of State aid from many school districts in this State during the current school year, and (2) that such withholding of State school funds will prevent such school districts from having a regular nine month school term, and thereby depriving thousands of school children in this State of an adequate education, (3) that many counties need additional time in which to complete reassessment of property, and (4) that the immediate passage of this Act is necessary in order to correct the situation mentioned above. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 440, § 6: March 11, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Arkansas Code 26-26-305 which requires a reappraisal of property in each county for ad valorem tax purposes at least every five (5) years does not address various issues concerning the application of the new appraised values when the reappraisal is carried out over a period of two or more years and purports to prevent application of the rollback provisions of Amendment #59 to the Arkansas Constitution when a reappraisal is carried out over a period of two or more years and consequently has raised several constitutional questions and caused considerable confusion in the administration

of ad valorem tax laws and should be repealed immediately. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 836, § 8: March 26, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 758 of 1995 has placed an unfair burden on the taxpayers of the State of Arkansas by directing countywide reappraisals of property in a manner which circumvents the rollback provisions of Amendment 59 of the Arkansas Constitution; that counties which have commenced a cyclical review of property in accordance with Act 758 of 1995 should be permitted to implement a fair and equitable comprehensive countywide reappraisal using valuations determined through the cyclical review program and in a manner which minimizes the disparities and inequities created through Act 758 of 1995; that when there is a countywide reappraisal of property for ad valorem tax purposes which is conducted over a period of two or more years, fairness and equity demand that taxes not be assessed on the new appraised values of any property in the county until all property therein has been reappraised, and that when taxes are first assessed on the basis of the newly appraised values, the provisions of Amendment #59 to the Arkansas Constitution, including the rollback provision, should be applied; that this act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed

by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1079, § 2: January 1, 2000.

Acts 1999, No. 1492, § 8: if contingency met, sections 1, 2, 3, 4 and 6 shall become effective on January 1, 2001, and Section 7 shall become effective on January 1, 2002. Effective date clause provided: "Effective Date. The provisions of Section 5 shall be effective 90 days after adjournment. The provisions of Sections 1, 2, 3, 4, 6 and 7 shall not be effective unless; a) the General Assembly refers a constitutional amendment to be approved during the 2000 general election; b) the amendment provides for a limitation on the increase in the assessed value of real property after a county-wide reappraisal; and c) the amendment is approved. If those conditions are met, Sections 1, 2, 3, 4 and 6 shall become effective on January 1, 2001, and Section 7 shall become effective on January 1, 2002. Claims for refund may be filed in 2001 pursuant to §§ 26-51-601 - 26-51-608 for property taxes paid during calendar year 2000 for property assessed in calendar year 1999."

Identical Acts 2000 (2d Ex. Sess.), Nos. 1 and 2, § 11. December 15, 2000. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that Amendment 79 to the Arkansas Constitution requires the General Assembly to provide for a property tax credit of not less than \$300 for each homestead; that providing such a property tax credit results in a significant reduction in revenues for funding county services and public schools; that without an alternative source of funding counties and public schools cannot operate effectively; that an increase in the state sales and use tax provides a source of funding for counties and public schools; that this act will accomplish the purposes of Amendment 79 in providing a property tax credit and source of funding. It is necessary that this act become effective immediately in order to facilitate the administration of the property tax credit and to generate sufficient revenues to fully fund the credit. Therefore, an emergency is declared to exist and Sections 1, 2, 3, 4, 5, 6, 8 and 9 of this act being immediately necessary for the preservation of the public peace, health and safety shall become

effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1275, § 4: Apr. 4, 2001. Emergency clause provided: "It is found and determined by the General Assembly that property tax reimbursements to the counties will most likely begin in April and it is critical to the counties to account for costs borne by the certification of amounts of real property tax reduction to the Chief Fiscal Officer of the State as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1544, § 6: Apr. 12, 2001. Emergency clause provided: "It is found and determined by the General Assembly that in order to efficiently reimburse the counties for the homestead property tax credit, county assessors are required to recertify to the Chief Fiscal Officer the amount of real property reduction on or before June 30 of the year 2001 and every year thereafter. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2005, No. 1772, § 3: Apr. 6, 2005. Emergency clause provided: "It is found and determined by the General Assembly

of the State of Arkansas that the Assessment Coordination Department prepares a ratio study to determine the average ratio of full assessed value to market value of real property; that there is a large amount of data submitted to the department by July 1 of each year; that the department is required to complete the ratio study by August 1 of that same year; and that extending the due date to September 15 would give the department more time to prepare an accurate ratio

study. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

Am. Jur. 72 Am. Jur. 2d, State Tax., § 720 et seq.

C.J.S. 84 C.J.S., Tax., § 373 et seq.

26-26-301. Duties of officers.

(a) All duties imposed by this subchapter on all state and county officers are declared to be mandatory, and any officer who neglects, fails, or refuses to perform any such duty shall be subject to removal from office and liable on his or her official bond for such neglect, failure, or refusal.

(b)(1) Upon the refusal or failure of any state officer to perform any duty imposed upon him or her under the provisions of this subchapter, any citizen of the state may, and the Attorney General of the State of Arkansas shall, institute in the proper court mandamus proceedings to compel the state officer to perform his or her duties.

(2) Upon the refusal or failure of any county officer to perform any duty imposed upon him or her under the provisions of this subchapter, any citizen of the county may, and the prosecuting attorney of the district including such county shall, institute in the proper court mandamus proceedings to compel the county officer to perform his or her duties.

History. Acts 1955, No. 153, § 13; A.S.A. 1947, § 84-478.

Publisher's Notes. See "Publisher's Notes" following § 26-26-304.

CASE NOTES

Jurisdiction.

Subdivision (b)(2) of this section does not provide an exception to the exclusive jurisdiction of county courts over matters relating to county taxes provided in Ark.

Const., Art. 7, § 28. *Young v. Jamison*, 309 Ark. 187, 828 S.W.2d 831 (1992).

Cited: *Baldwin v. Rushing*, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-26-302. Assessment records to be kept current.

(a) It shall be the duty of each county assessor to keep his or her appraisal and assessment data and records current by securing the necessary field data and making changes in valuations as changes occur in land use and improvements, and as errors are discovered and corrected, so that his or her records will at all times show the valuation of property in accordance with the provisions of this subchapter.

(b) Whenever land assessed on an acreage basis is subdivided into lots, the land shall be reassessed on the basis of lots, and whenever land is rezoned for a different use, the land shall be reassessed on the basis of its new classification.

History. Acts 1955, No. 153, § 6; A.S.A. 1947, § 84-475.

CASE NOTES

Cited: Dierks Forests, Inc. v. Shell, 240 Ark. 966, 403 S.W.2d 83 (1966); Board of Equalization v. Evelyn Hills Shopping Ctr., 251 Ark. 1055, 476 S.W.2d 211 (1972).

26-26-303. Percentage of value to be used in appraisal.

(a) The appraisal and assessment shall be according to value as required by Arkansas Constitution, Article 16, Section 5.

(b) The percentage of true and full market or actual value to be used in the appraisal and assessment shall be fixed and certified by the Arkansas Public Service Commission as provided by § 26-24-104.

(c) Until and unless a budget system is adopted with provisions for eliminating excessive and illegal tax rates and expenditures, the commission shall not fix and certify a percentage of true and full market or actual value in excess of twenty percent (20%).

History. Acts 1955, No. 153, § 4; A.S.A. 1947, § 84-476.

A.C.R.C. Notes. The authority of the Arkansas Public Service Commission with respect to the equalization and assessment of property and the administration

of tax laws, except with respect to public utilities and carriers, was transferred to the Assessment Coordination Department by Acts 1997, No. 436. See §§ 25-28-102 and 25-28-103.

CASE NOTES**Basis of Valuation.**

Arkansas Constitution requires assessment of property on basis of current market value. Arkansas Pub. Serv. Comm'n v. Pulaski County Bd. of Equalization, 266 Ark. 64, 582 S.W.2d 942 (1979), superseded by statute as stated in, Clark v.

Union P. R. Co., 294 Ark. 586, 745 S.W.2d 600 (Ark. 1988) (decision prior to Const. Amend. 59).

Cited: Arkansas State Hwy. Comm'n v. Roberts, 246 Ark. 1216, 441 S.W.2d 808 (1969); Baldwin v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-26-304. Ratio of assessed value to market value in the assessment year that reappraised values are placed on the assessment rolls.

(a)(1)(A) The Assessment Coordination Department shall prepare a ratio study for the purpose of determining the average ratio of full assessed value to the true and full market or actual value of real property, by classifications, in each of the several counties and school districts of the state in the assessment year that reappraised values are placed on the assessment rolls.

(B)(i) This ratio study shall be based on sales-to-assessment ratios, supplemented with appraisal to assessment ratios as required to meet generally accepted statistical techniques.

(ii) The study shall determine the actual assessment level of real estate as required by law, including the value of agricultural lands that qualify for use and productivity valuation, by classification such as residential, commercial and industrial, agricultural, and other classifications.

(iii) No later than January 31 of every year, all counties shall report, by electronic transmission, sales data to the department. The sales data shall include:

(a) A listing of each property transferred under a warranty deed or special warranty deed;

(b) The consideration paid;

(c) The date of the sale;

(d) The parcel number;

(e) The legal description;

(f) The names of the grantor and grantee;

(g) The most recent assessed value of the property; and

(h) Other data prescribed by the department.

(iv)(a) The sales-to-assessment ratio study shall include sales data for the calendar year previous to the assessment year.

(b) In those instances when the number of appropriate sales from the calendar year previous to the assessment year is insufficient to present a statistically sound sample, the sales-to-assessment ratio study may include sales data for the three (3) calendar years previous to the assessment year.

(c) The department shall report the preliminary sales-to-assessment ratio studies to the county assessor and county judge on or before March 1 of the assessment year.

(2) The department shall supplement the sales-to-assessment ratio with appraisals as required and report the original combined real property ratios to the county assessor and county judge.

(3) In conducting the studies, the department shall use generally accepted valuation procedures, statistical compilation, and analysis techniques found in the International Association of Assessing Officers' Standard on Ratio Studies.

(b)(1)(A) An annual ratio study for the purpose of determining the average ratio of assessed value to the true and full market or actual

value of personal property in each of the several counties of the state shall also be made.

(B) This ratio study of personal property shall be based upon a physical examination of the records of each county assessor's office to determine the degree of compliance with the criteria as established by the Personal Property Manual.

(2) The personal property original ratio study shall be certified by the department to the county judge and county assessor of each county by September 15 of each year.

(c)(1) On or before August 1 of each year the county assessor shall report to the department by total of items and value the total assessment of the county as made by the county assessor.

(2)(A) The county clerk shall file a report with the department showing the percent of true market or actual value at which the county equalization board has equalized the assessed values of the property of the county under the county equalization board's jurisdiction for the year, together with an abstract of the adjusted assessment by total of items and value.

(B) The report and abstract shall be filed each year no later than thirty (30) days after final adjournment of the county equalization board.

(d)(1) Whenever any county assessor or deputy county assessor attends a school or instructional meeting pursuant to the request of the department, he or she shall be entitled to reimbursement for his or her travel expenses, which shall be paid by the department upon filing of a proper claim for the travel expenses.

(2) The county assessor and his or her deputies shall also be entitled to reimbursement for travel expenses within the county in performance of their duties as required by this section, which shall be paid by the county.

(3)(A) All reimbursements for travel expenses shall be limited to the actual and necessary expenses incurred.

(B) The total expenses incurred, other than for transportation, for travel within the county shall not exceed one-half ($\frac{1}{2}$) the daily maximum amount authorized for travel of state employees within the state, and, for travel outside the county, the amount shall not exceed the daily maximum amount authorized for travel of state employees within the state, in accordance with state travel laws and regulations.

(C) The transportation expenses shall not exceed the actual amount paid, except that the reimbursement for use of a private automobile shall be at the same rate per mile as is allowed in the reimbursement of state employees under the state travel laws and regulations for transportation expenses for each mile actually and necessarily traveled by the automobile, within and without the county.

(e)(1) In addition to the other provisions of this section, whenever the September 15 ratio for the classifications of market value real estate,

business personal property, auto and other personal property, or agricultural and timber falls below eighteen percent (18%) or above twenty-two percent (22%) of full fair market value, the county shall be deemed to have failed the ratio study and shall be subject to the corrective actions outlined in subsection (f) of this section.

(2) Furthermore, when a ratio study determines that the county does not meet the ratio standards found in the International Association of Assessing Officers' Standard on Ratio Studies, the county shall be deemed to have failed the ratio study and shall be subject to the corrective actions outlined in subsection (f) of this section.

(3) The department may conduct a county ratio study, in full or in part, at any time that the department determines that a county has engaged in inappropriate assessment roll changes or manipulations.

(f)(1)(A) When a county has failed the ratio study, the department shall direct and supervise a detailed market value and assessment value analysis of the area or class indicating a deficiency in order to determine the political subdivisions and neighborhoods or appraisal methodology, or both, in need of assessment value adjustments.

(B) When appropriate assessment value adjustments are determined for the county, the county shall place the assessment value adjustments on the assessment rolls of the county in a manner that is most equitable for the taxpayers of the county for taxation according to the laws of this state.

(C)(i) The department and counties employing contracted appraisal services shall bear no additional expense for correcting a failed ratio study if the failure is found to be the fault of the contractor.

(ii) The contractor shall bear the cost of these additional services.

(2)(A) In the case in which a county fails to place the assessment value adjustments on the assessment rolls of the county as directed by the department, the department may notify the disbursing agents of the State of Arkansas to withhold the funds accruing to the county from all sources until the time that the adjustments are made.

(B) If the adjustments are not made for one (1) year, the withheld funds shall not be reimbursed to the county and shall be deposited into the State General Government Fund, and withholding shall begin for the following year.

(g)(1) If a county is aggrieved at the findings of the department, the county may appeal the findings of the department to the Director of the Assessment Coordination Department.

(2) The officials of each unit of government affected shall have the right to examine the records of the department that pertain to the ratio findings or value adjustment order for that unit of government.

History. Acts 1955, No. 153, §§ 9, 12; 1957, No. 304, § 1; 1959, No. 31, § 1; 1959, No. 244, § 1; 1969, No. 60, § 1; A.S.A. 1947, §§ 84-477, 84-477n; Acts 1987, No. 838, § 1; 1997, No. 440, § 2(g); 1999, No. 1079, § 1; 2001, No. 1131, § 1; 2005, No. 73, § 1; 2005, No. 1772, §§ 1, 2.

Publisher's Notes. Acts 1955, No. 153 as originally enacted was, except for §§ 4, 6, and 13 (§§ 26-26-301 — 26-26-303), a

temporary law providing for an appraisal and assessment of property as of January 1, 1957. However, thereafter, amendments were made to § 12 (this section) inserting continuing provisions making this section permanent in nature. Therefore, § 12 has been codified above, and

because of possible applicability of other provisions of this act to this subchapter, the other sections of Acts 1955, No. 153, as amended, should also be checked.

Effective Dates. Acts 1999, No. 1079, § 2: January 1, 2000.

CASE NOTES

ANALYSIS

Capitalization of Income Method.
Manual for Assessors.
Market Value.
Remedies of Taxpayer.

Capitalization of Income Method.

A trial court did not err in basing its decision as to the property assessment upon values reflected by the capitalization of income method. Board of Equalization v. Evelyn Hills Shopping Ctr., 251 Ark. 1055, 476 S.W.2d 211 (1972).

Manual for Assessors.

The methods and criteria of the manual required by Acts 1955, No. 153, § 5, are to be used as a guide by assessors in assessing real and personal property. Kitchens v. Arkansas Appraisal Serv., 233 Ark. 384, 344 S.W.2d 853 (1961).

Assessors who substantially comply with procedure outlined in assessment manual in assessing real and personal property have complied with Acts 1955, No. 153, § 5. Kitchens v. Arkansas Appraisal Serv., 233 Ark. 384, 344 S.W.2d 853 (1961).

Market Value.

Acts 1973, No. 411 was held unconstitutional, because, under the act, property was not assessed as to current market value, but, instead, artificial 1956 values for residential property and certain construction were used, and likewise, farm and timber land were valued as of 1961. Arkansas Pub. Serv. Comm'n v. Pulaski County Bd. of Equalization, 266 Ark. 64,

582 S.W.2d 942 (1979), superseded by statute as stated in, Clark v. Union P. R. Co., 294 Ark. 586, 745 S.W.2d 600 (Ark. 1988) (decision prior to Const. Amend. 59).

A 1979 county reassessment, although not based on current market value of real property, was an action taken to achieve a more proper level of taxation and, as such, was neither illegal nor contrary to the decision in Arkansas Pub. Serv. Comm'n v. Pulaski County Bd. of Equalization, 266 Ark. 64, 582 S.W.2d 942 (1979), which allowed the Public Service Commission until the end of 1979 to prepare an implementation plan and provided that statewide reassessments begin in January 1981. Rodgers v. Easterling, 270 Ark. 255, 603 S.W.2d 884 (1980).

Remedies of Taxpayer.

Taxpayer cannot enjoin an assessment where he has failed to exhaust his remedy of appeal from action or inaction by a county board of equalization. New St. Mary's Gin, Inc. v. Moore, 232 Ark. 24, 334 S.W.2d 683 (1960).

Writ of mandamus as remedy. New St. Mary's Gin, Inc. v. Moore, 232 Ark. 24, 334 S.W.2d 683 (1960).

Cited: Saint Louis-San Francisco Ry. v. Arkansas Pub. Serv. Comm'n, 227 Ark. 1066, 304 S.W.2d 297 (1957); Layne v. Strode, 229 Ark. 513, 317 S.W.2d 6 (1958); Dierks Forests, Inc. v. Shell, 240 Ark. 966, 403 S.W.2d 83 (1966); Gilmore v. Lawrence County, 246 Ark. 614, 439 S.W.2d 643 (1969); Burgess v. Four States Mem. Hosp., 250 Ark. 485, 465 S.W.2d 693 (1971); ABF Freight Sys. v. Tax Div., 787 F.2d 292 (8th Cir. 1986).

26-26-305. [Repealed.]

Publisher's Notes. This section, concerning the valuation review program, was repealed by Acts 1997, No. 440, § 1 and No. 836, § 1. The section was derived

from Acts 1995, No. 758, §§ 1-5. For present law, see §§ 26-26-306 — 26-26-308, and 26-36-410.

26-26-306. Countywide reappraisal of property.

(a) Any countywide valuation review program begun in accordance with the requirements of § 26-26-305 [repealed] shall be deemed to be a countywide reappraisal of property pursuant to directive of law enacted by the General Assembly.

(b) Any county which has begun but has not completed a countywide valuation review program in accordance with the requirements of § 26-26-305 [repealed] or otherwise on March 26, 1997, shall direct that a countywide reappraisal of property be completed, using, in part, valuations determined through the valuation review program for each parcel of taxable property reviewed to date.

(c) The provisions of § 26-26-401 et seq. relative to the adjustment or rollback of millage levied for ad valorem tax purposes shall be applicable where a countywide reappraisal of property is completed as provided in this section.

(d) Any county which has begun but has not completed a countywide valuation review program in accordance with the requirements of § 26-26-305 [repealed] or otherwise on March 26, 1997, shall suspend the valuations determined through the valuation review program and use the valuations which were applicable prior to the valuation adjustments pending the completion of the countywide reappraisal.

(e) Ad valorem taxes which are due and owing on March 26, 1997, shall continue to be due and owing and shall not be affected by the terms of this section.

History. Acts 1997, No. 836, § 2.

CASE NOTES**In General.**

It was error for the trial court to interpret subsection (e) of this section as exempting 1996 county taxes from the rollback provision of Amendment 59 on the basis that the taxes from 1996 were due and owing at the time the law took effect

and that, therefore, the provisions of the statute were inapplicable to those taxes; such an interpretation of the statute improperly carved out an exception to the requirements of Amendment 59. *Worth v. City of Rogers*, 341 Ark. 12, 14 S.W.3d 471 (2000).

26-26-307. Completion of reappraisal — Suspension of penalties.

(a) When there is a countywide reappraisal of property for ad valorem tax purposes in any county, which reappraisal is conducted over a period of two (2) or more years, taxes shall not be assessed on the basis of the reappraised value of any property in the county until all taxable property in the county has been reappraised. When a countywide reappraisal of property is completed in any county and taxes are first assessed on the newly reappraised values, the provisions of Arkansas Constitution, Amendment 59, and § 26-26-401 et seq. relative to the adjustment or rollback of millage levied for ad valorem tax purposes shall be applicable.

(b) Provided that newly discovered real property, new construction and improvements to real property, and personal property, shall be listed, appraised and assessed as otherwise provided by law until the countywide reappraisal of property is completed.

(c) No county which is conducting a comprehensive countywide reappraisal of property for ad valorem tax purposes which is in progress on the third Monday in November in any year, or any municipality or school district therein, shall be subject to any penalties provided in § 26-26-304 for such fiscal year if the following requirements are met:

(1) The reappraisal meets the requirements of § 26-26-401; and

(2) The reappraisal is conducted in accordance with a plan which has been approved by the Assessment Coordination Department and provides that the reappraisal will be completed within twenty-four (24) months following the date of such approval.

History. Acts 1997, No. 836, § 3.

A.C.R.C. Notes. References to "this chapter" in subchapters 1 and 2, §§ 26-26-301 to 26-26-304, and subchapters 4-18 may not apply to this section, which was

enacted subsequently.

References to "this subchapter" in §§ 26-26-301 to 26-26-304 may not apply to this section, which was enacted subsequently.

26-26-308. Rules and regulations.

The Assessment Coordination Department shall promulgate appropriate rules and regulations to carry out the provisions of §§ 26-26-306 and 26-26-307 and this section.

History. Acts 1997, No. 836, § 4.

26-26-309. [Repealed.]

Publisher's Notes. This section, concerning a contingent certification of amount of property tax reduction, was repealed by identical Acts 2000 (2d Ex.

Sess.), Nos. 1 and 2, § 3. The section was derived from Acts 1999, No. 1492, § 2. For present law, see Ark. Const. Amend. 79 and § 26-26-310.

26-26-310. Certification of amount of property tax reduction.

(a)(1) On or before March 31 of each year, the county collector of each county shall certify to the Chief Fiscal Officer of the State the amount of the real property tax reduction provided in § 26-26-1118.

(2)(A) After receipt of the certification from the county collectors, the Chief Fiscal Officer of the State shall determine the proportionate share of the total statewide reduction attributable to each county.

(B)(i) At the end of each month, the Chief Fiscal Officer of the State shall determine the balance in the Property Tax Relief Trust Fund and certify it to the Treasurer of State.

(ii) The Treasurer of State shall make distributions from the Property Tax Relief Trust Fund to each county treasurer in accordance with the county's proportionate share of the total statewide

property tax reduction for that calendar year resulting from the provisions of § 26-26-1118.

(iii)(a) Effective January 1, 2006, the Treasurer of State shall make a monthly distribution from the Property Tax Relief Trust Fund to each county treasurer.

(b) The distributions for January, February, and March shall be in accordance with the county's proportionate share of the total state-wide property tax reduction as of the final county certification of the previous year.

(c) Beginning in April of each year, the distribution from the Property Tax Relief Trust Fund to each county treasurer shall be in accordance with the county's proportionate share of the total state-wide property tax reduction for that calendar year under § 26-26-1118.

(C)(i) If the Chief Fiscal Officer of the State has not received all of the certifications from the county collectors, then the distribution of the Property Tax Relief Trust Fund shall be as follows until all certifications have been received:

(a) The total amount of the Property Tax Relief Trust Fund to be distributed shall equal the total amount in the Property Tax Relief Trust Fund multiplied by the proportion of the previous year's total property assessment, less tangible personal property and property owned by utilities and regulated carriers, of the counties that have certified, divided by the previous year's total property assessment, less tangible personal property and property owned by utilities and regulated carriers in the state; and

(b) Each county that has certified its property tax reduction shall receive an amount of the Property Tax Relief Trust Fund, as adjusted in subdivision (a)(2)(C)(i)(a) of this section, equal to the county's proportionate share of the total property tax reduction of the counties that have certified their property tax reductions.

(ii) However, until all counties have certified their property tax reductions to the Chief Fiscal Officer of the State, no county shall receive more than seventy-five percent (75%) of its certified property tax reduction.

(3)(A)(i) Funds so received by the county treasurers shall be credited to the county property tax relief fund.

(ii) Ninety-six percent (96%) of the funds shall be allocated and distributed to the various taxing entities within the county that levy ad valorem taxes.

(iii) The allocation shall be based on a certification from the county collector of the amount of the real property tax reduction per taxing entity provided in § 26-26-1118.

(iv)(a) The four percent (4%) retained in the county property tax relief fund is the commission of the county collector as authorized under § 21-6-305(a)(4).

(b) This commission shall become a part of the total commission of the county collector.

(v) These funds are subject to § 21-6-305(d).

(B) Funds so received by the various taxing units shall be used for the same purposes and in the same proportions as otherwise provided by law.

(b)(1) Distributions to each county shall continue on a monthly basis from the Property Tax Relief Trust Fund until the full amount certified by the county collectors, as of November 15 of each year, has been paid.

(2)(A) In no event shall the amount distributed to a county during a calendar year from the Property Tax Relief Trust Fund exceed the final amount certified by the county collector as of November 15 as the property tax reduction for that calendar year resulting from § 26-26-1118.

(B) If a county is paid in excess of its proportionate share, the Chief Fiscal Officer of the State may reduce payments made to the county for the subsequent calendar year until the overpayment is recovered.

(C)(i) On or before December 31 of each year, the Chief Fiscal Officer of the State, in cooperation with the Legislative Council and the Legislative Auditor, shall determine that portion of the balance remaining in the Property Tax Relief Trust Fund that is in excess of the required reimbursement to the counties and shall certify the excess to the Treasurer of State.

(ii) Beginning December 31, 2005, and on December 31 of each subsequent year, the Treasurer of State shall:

(a) Calculate an amount equal to one percent (1%) of the amount of the excess funds certified in subdivision (b)(2)(C)(i) of this section;

(b) Calculate each county's proportionate share of the amount calculated in subdivision (b)(2)(C)(ii)(a) of this section based on the proportions used to reimburse the county for property tax reductions under subsection (a) of this section; and

(c) Transfer the amount calculated under subdivision (b)(2)(C)(ii)(b) of this section to the county treasurer for allocation to the county assessor.

(iii)(a) These funds shall be used by the county assessor for the costs of administering Arkansas Constitution, Amendment 79.

(b) These costs include personnel, equipment, services, and postage used in the administration of Arkansas Constitution, Amendment 79.

(iv) The remaining excess funds may be used in accordance with subsequent legislation to provide additional tax relief or financial assistance to school districts that incur a reduction in revenue as a direct result of Arkansas Constitution, Amendment 79.

(3)(A) The Legislative Auditor or his or her designee shall audit the books and records of the county assessor, county collector, or any other party as needed to ensure that the amount of the property tax reduction certified by the county collector is accurate.

(B) The Chief Fiscal Officer of the State may adjust the amount certified by the county collector if it is discovered that the certified amount is incorrect.

(c)(1) On or before June 30 and November 15 of each year, the county collector of each county shall recertify to the Chief Fiscal Officer of the State the amount of the real property tax reduction provided in § 26-26-1118.

(2) The recertification shall reflect the most current total of tax reductions based on corrections and amendments to the records of the county assessor.

(3) After receipt of the recertification from the county collectors, the Chief Fiscal Officer of the State shall redetermine the proportionate share of the total statewide reduction attributable to each county.

History. Acts 2000 (2d Ex. Sess.), Nos. 1 and 2, § 4; 2001, No. 1275, § 3; 2001, No. 1544, § 2; 2005, No. 659, § 1; 2005, No. 1892, § 2.

Cross References. Property Tax Relief Trust Fund, § 19-5-1103.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General As-

sembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

26-26-311. Appraisal completion on the date the county collector's books are open for collection on the newly appraised value.

(a) For purposes of Arkansas Constitution, Amendment 79, and any laws of this state referencing countywide reappraisals of property for property taxation purposes, a countywide reappraisal of property shall be deemed to have been completed on the date that the county collector's books are open for collection on the newly appraised values.

(b) This section does not prohibit any increases allowed by the Arkansas Constitution.

History. Acts 2001, No. 204, § 1.

SUBCHAPTER 4 — ADJUSTMENT OF TAXES

SECTION.	SECTION.
26-26-401. Applicability.	26-26-406. Tax adjustment procedure.
26-26-402. Procedure for adjustment of taxes after reappraisal or reassessment of property.	26-26-407. Valuation of different types and uses of property.
26-26-403. Certification of assessed value data.	26-26-408. Implementation of millage rollback in fringe school districts.
26-26-404. Computation and certification form.	26-26-409. Rules and regulations.
26-26-405. Personal property interim millage adjustment.	26-26-410. [Repealed.]

Effective Dates. Acts 1981, No. 848, § 11: Mar. 28, 1981. Emergency clause

provided: "It is hereby found and determined by the General Assembly that

Amendment 59 to the Arkansas Constitution was adopted to minimize the increased tax burden which would otherwise have resulted from a court ordered statewide reappraisal of property for ad valorem tax purposes; that several counties are in the process of conducting the reappraisal of property mandated by the court; that Amendment 59 requires enactment of legislation to implement the provisions thereof and that this Act provides such implementation and should be given effect immediately to accomplish the purposes of Amendment 59 in an orderly, effective and efficient manner. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 1300, § 29: Apr. 10, 1997. Emergency clause provided: "It is found and determined by the General Assembly that Amendment No. 74 to the Arkansas Constitution was adopted by the electors of this state on November 5, 1996; that Amendment No. 74 became effective on adoption and applies to ad valorem property taxes due in 1997; that the tax books of each county will open for collection of taxes in the near future and that local officials and school districts must have direction on procedures and effects of the various actions required. The General Assembly further finds that Amendment No. 74 requires enactment of legislation to implement the provisions thereof and that this act provides such implementation and should be given effect immediately to accomplish the purposes of Amendment No. 74 in an orderly, effective and efficient manner. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective

on the date the last house overrides the veto."

Acts 2003 (2nd Ex. Sess.), No. 28, § 10: Dec. 31, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Supreme Court has declared that the current method that the state uses to determine compliance with Amendment 74 to be unconstitutional and has instructed the General Assembly to take action before the termination of the court's stay of its mandate. It is also found that the people must be informed as early as possible the impact of the court's ruling on the property taxes that they pay for education. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2003 (2nd Ex. Sess.), No. 105, § 12: Feb. 10, 2004. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Supreme Court has declared that the current method that the state uses to determine compliance with Amendment 74 to be unconstitutional and has instructed the General Assembly to take action before the termination of the court's stay of its mandate. It has also found that the people must be informed as early as possible of the impact of the court's ruling on the property taxes that they pay for education. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

Am. Jur. 72 Am. Jur. 2d, State Tax., § 817 et seq. **C.J.S.** 84 C.J.S., Tax., § 506 et seq.

CASE NOTES

ANALYSIS

Purpose.
Equalization.

Purpose.

Constitutional Amend. 59 was intended to effect equalization on a gradual basis by holding the revenue from taxation of personal property relatively static as taxes on real estate increased, and Act 848 of 1981, codified as this subchapter, was passed to implement Amendment 59. *Crane v. Newark School Dist. No. 33*, 303 Ark. 650, 799 S.W.2d 536 (1990).

Equalization.

From both the wording of Ark. Const. Amend. 59 (which appears as Ark. Const., Art. 16, §§ 5, 14-16 in the text of the Constitution) and this subchapter, real estate taxes cannot be increased more

than 10 percent per year until such time as the personal and real property evaluation and millage rates are equalized. The amendment prevents the taxing units from receiving more than a 10 percent increase in tax collections for any one year; in the event the applicable millage would result in the collection of more than a 10 percent increase in revenues, a rollback procedure is mandated. *Clark v. Union Pac. R.R.*, 294 Ark. 586, 745 S.W.2d 600 (1988).

Both Ark. Const., Art. 16, § 14 and this subchapter contemplate that equalization of rates of taxation on realty and personalty will occur because there will be an increase in personal property in any taxing unit from year to year but the amount of realty will remain the same. *Crane v. Newark School Dist. No. 33*, 303 Ark. 650, 799 S.W.2d 536 (1990).

26-26-401. Applicability.

The provisions of this subchapter relative to the adjustment or rollback of millage levied for ad valorem tax purposes shall be applicable only where there is a countywide or statewide reappraisal of property:

- (1) Pursuant to court order;
- (2) Pursuant to directive of law enacted by the General Assembly;
- (3) When the reappraisal is initiated by the county assessor, the county equalization board, by directive of the county quorum court or upon request of one (1) or more taxing units of a county, and is determined and certified by the Assessment Coordination Department as constituting a comprehensive countywide reappraisal; or
- (4) When ordered by or implemented by a county pursuant to a directive of the department or its successor agency.

History. Acts 1981, No. 848, § 8; A.S.A. 1947, § 84-493.7.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey—Miscellaneous, 11 U. Ark. Little Rock L.J. 235.

CASE NOTES

In General.

This subchapter applies only to a rollback of millage levied where there has been a countywide or statewide reappraisal of property pursuant to the four factors listed in this section. *Gazaway v. Greene County Equalization Bd.*, 314 Ark. 569, 864 S.W.2d 233 (1993).

Where there is no evidence an appraisal occurred as a result of a countywide or

statewide reappraisal of property by one of the four methods listed in this section, § 26-26-407 does not apply. *Gazaway v. Greene County Equalization Bd.*, 314 Ark. 569, 864 S.W.2d 233 (1993).

Cited: *Crane v. Newark School Dist.* No. 33, 303 Ark. 650, 799 S.W.2d 536 (1990); *Worth v. City of Rogers*, 341 Ark. 12, 14 S.W.3d 471 (2000).

26-26-402. Procedure for adjustment of taxes after reappraisal or reassessment of property.

(a)(1) Whenever a countywide reappraisal or reassessment of property subject to ad valorem taxes, made in accordance with procedures established in this subchapter and with regulations of the Assessment Coordination Department, or its successor agency, adopted pursuant to the authority granted in this section shall result in an increase in the aggregate value of taxable real and personal property in any taxing unit in this state of ten percent (10%) or more over the previous year, the rate of city or town, county, school district, and community college district taxes levied against the taxable real and personal property of each taxing unit shall, upon completion of the reappraisal or reassessment, be adjusted or rolled back by the governing body of the taxing unit for the year for which levied as provided.

(2) The adjustment or rollback of tax rates or millage for the base year as defined in subdivision (a)(5) of this section shall be designed to assure that each taxing unit will receive an amount of tax revenue from each tax source no greater than ten percent (10%) above the revenues received during the previous year from each tax source, adjusted for any lawful tax or millage rate increase or reduction imposed in the manner provided by law for the year for which the tax adjustment or rollback is to be made, and after making the following additional adjustments:

(A) By excluding from calculation the assessed value of, and taxes derived from, tangible personal property assessed in the taxing unit and all real and tangible personal property of public utilities and regulated carriers assessed in the taxing unit; and

(B)(i) By computing the adjusted or rollback millage rates on the basis of the reassessed taxable real property for the base year that will produce an amount of revenue no greater than ten percent (10%) above the revenues produced from the assessed value of real property in the taxing unit after making the aforementioned adjustments for

personal properties and properties of public utilities and regulated carriers as provided in subdivision (a)(2)(A) of this section from millage rates in effect in the taxing unit during the base year in which the millage adjustment or rollback is to be calculated;

(ii) In calculating the amount of adjusted or rollback millage necessary to produce tax revenues no greater than ten percent (10%) above the revenues received during the previous year, the governing body shall separate from the assessed value of taxable real property of the taxing unit, newly discovered real property and new construction and improvements to real property, after making the adjustments for personal property or property of public utilities and regulated carriers as provided in subdivision (a)(2)(A) of this section, and shall compute the millage necessary to produce an amount of revenues equal to, but no greater than, the base year revenues of the taxing unit from each millage source. Such taxing unit may elect either to obtain an increase in revenues equal to the amount of revenues that the computed or adjusted rollback millage will produce from newly discovered real property, new construction, and improvements to real property, or, if the same is less than ten percent (10%), the governing body of the taxing unit may recompute the millage rate to be charged to produce an amount no greater than ten percent (10%) above the revenues collected for taxable real property during the base year.

(3) The amount of revenues to be derived from taxable personal property assessed in the taxing unit for the base year, other than personal property taxes to be paid by public utilities and regulated carriers in the manner provided, shall be computed at the millage necessary to produce the same dollar amount of revenues derived during the current year in which the base year adjustment or rollback of millage is computed, and the millage necessary to produce the amount of revenues received from personal property taxes received by the taxing unit, for the base year shall be reduced annually as the assessed value of taxable personal property increases until the amount of revenues from personal property taxes, computed on the basis of the current year millage rates, will produce an amount of revenues from taxable personal property equal to or greater than that received during the base year, and thereafter the millage rates for computing personal property taxes shall be the millage rates levied for the current year.

(4) The taxes to be paid by public utilities and regulated carriers in the respective taxing units of the several counties of this state during the first five (5) calendar years in which taxes are levied on the taxable real and personal property as reassessed and equalized in each of the respective counties as a part of a statewide reappraisal program shall be the greater of the following:

(A) The amount of taxes paid on property owned by such public utilities or regulated carriers in or assigned to the taxing unit, less adjustments for properties disposed of or reductions in the assessed valuation of such properties in the base year as defined below; or

(B) The amount of taxes due on the assessed valuation of taxable real and tangible personal property belonging to the public utilities or regulated carriers located in or assigned to the taxing unit in each county at millage rates levied for the current year.

(5)(A) As used in this section, “base year” means the year in which a county completes reassessment and equalization of taxable real and personal property as a part of a statewide reappraisal program and extends the adjusted or rolled back millage rates for the first time, as provided in subdivision (a)(1) of this section, for the respective taxing units in that county for collection in the following year.

(B) In the event the amount of taxes paid the taxing unit in a county in the base year, as defined in this subdivision (a)(5), is greater than the taxes due to be paid to such taxing unit for the current year of any year of the second period of five (5) years after the base year, the difference between the base-year taxes and the current year taxes for any year of the five-year period shall be adjusted as follows:

Current year of second period of five (5) years	Taxes shall be current-year taxes to which shall be added the following percentage of the difference between the current-year taxes and the base-year taxes (if greater than current-year taxes)
1st year	80% of difference
2nd year	60% of difference
3rd year	40% of difference
4th year	20% of difference
5th year and thereafter	Current year’s taxes only

(C) If the current-year taxes of a public utility or regulated carrier equal or exceed the base-year taxes due a taxing unit during any year of the first ten (10) years after the base year, the amount of taxes to be paid to the taxing unit shall thereafter be the current-year taxes, and the adjustment authorized in this section shall no longer apply in computing taxes to be paid to such taxing unit.

(6) In the event the requirement for payment of taxes by public utilities and regulated carriers, or any class of utilities or carriers for the ten-year period as provided in subdivision (a)(5)(C) of this section shall be held by court decision to be contrary to the constitution or statutes of this state or of the federal government, all utilities and all classes of carriers shall receive the same treatment provided or required under the court order for a particular type of carrier or utility if deemed necessary to promote equity between similar utilities or classes of carriers.

(b) If it is determined that the adjustment or rollback of millages as provided for in this section will render income from millages pledged to secure any bonded indebtedness insufficient to meet the current requirements of all principal, interest, paying agents’ fees, reserves, and

other requirements of a bond indenture, any pledged millage shall be rolled back or adjusted only to a level which will produce at least a level of income sufficient to meet the current requirements of all principal, interest, paying agents' fees, reserves, and other requirements of the bond indenture.

(c) Pursuant to the application of Arkansas Constitution, Amendment 74, to the rollback provisions of Arkansas Constitution, Amendment 59, for millage rates levied by the various school districts within the county, if it is determined that the adjustment or rollback of millages as provided in Arkansas Constitution, Amendment 59 will result in a tax rate available for maintenance and operation of less than the uniform rate of tax, then the millage shall be rolled back only to the uniform rate of tax plus debt service millage required, and no further.

History. Acts 1981, No. 848, § 1; A.S.A. 1947, § 84-493; Acts 1997, No. 1300, § 22.

Cross References. Procedure for adjustment of taxes after reappraisal or re-

assessment of property, Const., Amend. No. 59, § 14 (incorporated as Ark. Const., Art. 16, § 14).

CASE NOTES

Guarantee of 10 Percent.

The language in subdivision (a)(2) of this section that, upon completion of a county-wide reappraisal or reassessment of property, "each taxing unit will receive an amount of tax revenue from each tax source no greater than 10% above the revenues received during the previous year" is part of a guarantee to the taxpayers that their taxes would not be increased by more than 10%; the language is not a guarantee to school districts that they

would get an exact 10% increase in tax money. Thus, where, following a reappraisal and reassessment of property, school districts received increases ranging from 4.9% to 8.7%, the districts could not argue that the increases were insufficient and that they were instead entitled to full 10% increases. Wells, 281 Ark. 303, 663 S.W.2d 733 (1984).

Cited: Barker v. Frank, 327 Ark. 589, 939 S.W.2d 837 (1997).

26-26-403. Certification of assessed value data.

- (a) In the base year of an approved countywide reassessment program, the county clerk shall certify the assessed value by taxing unit after the county equalization board hearings and county court hearings, on the first Monday in November.
- (b) On or before the second Monday in November of the base year, the county clerk shall report to the governing body of each taxing unit the following completed form, accurately listing the required data on each line.

Base Year Certification of Assessment Data
on Real Estate

COUNTY:

TAXING UNIT:

DATE:

1. Total Assessment

2. Total Newly Discovered Property List	<hr/>
3. Total Taxes Certified for Collection	<hr/>
4. Millage Levy for Main- tenance and Operations	<hr/> <hr/>
5. Millage Levy for Bonds or Debt Service	<hr/> <hr/> <hr/> <hr/>
County Clerk Certification:	<hr/>
	Signature

History. Acts 1981, No. 848, § 2; A.S.A. Sess.), No. 28, § 4; 2003 (2nd Ex. Sess.), 1947, § 84-493.1; Acts 2003 (2nd Ex. No. 105, § 6.

CASE NOTES

Cited: Barker v. Frank, 327 Ark. 589, 939 S.W.2d 837 (1997).

26-26-404. Computation and certification form.

(a)(1) The governing body of each taxing unit in the base year of countywide reassessment shall complete the following form and return the form to the county clerk on or before the third Monday in November of the base year, using certified data provided by the county clerk as described in § 26-26-402.

(2) The form shall be signed by the officers of the governing body of each taxing unit.

(b)(1) If newly discovered and new construction properties are less than a ten percent (10%) increase in assessments, the governing body of each taxing unit may elect to increase the rolled back millage an amount to allow no more than an overall ten percent (10%) increase in taxes.

(2) If the newly discovered and new construction property list is ten percent (10%) or more above reassessment total, the total amount is allowed; however, no increase in the rolled back millage shall be considered.

(c) Each tax source or millage levy shall be computed and rounded up to the nearest one-tenth (1/10) mill.

(d) The county clerk shall file and record the completed forms required in § 26-26-403 and this section and shall forward a copy of the

forms to the Assessment Coordination Department by December 1 of the base year.

Base Year Millage Rollback Computation and Certification Form

COUNTY: _____

TAXING UNIT: _____

DATE: _____

- 1. Compute the following to discover total of reassessed property:
 - a. Total base year assessments _____
 - b. Less newly discovered, new construction properties _____
 - c. Equals total reassessed properties _____
- 2. Compute the following to find the zero-increase millage adjustment:
 - a. Base-year taxes certified for collection _____
 - b. Divided by reassessed properties _____
 - c. Equals zero-increase millage _____
- 3. Compute the following to find the percentage of newly discovered property:
 - a. Newly discovered, new construction properties _____
 - b. Divided by total assessed properties _____
 - c. Equals percent newly discovered _____
- 4. Millage adjustment option:
 - a. Maximum increase option 10% _____
 - b. Minus newly discovered property percentage _____
 - c. Allowable optional millage increase _____
- 5. To compute millage adjustment option if applicable:
 - a. Rolled back zero-base millage _____
 - b. Times allowed optional millage increase percent _____
 - c. Equals indicated overall millage of _____
- 6. Each tax source or levy shall be adjusted by applying the following computed multipliers and adjusting to the next highest one-tenth (1/10) mill:
 - a. Overall millage from 5.c. above _____
 - b. Divided by previous millage prior to base year _____

c. Equals multiplier

7. Compute each tax source or levied millage in the following table:

Tax Source	Previ- ous Millage	x	Multiplier	=	Adjusted Rounded Millage/Millage
		x		=	/
		x		=	/
		x		=	/
		x		=	/
		x		=	/
		x		=	/
		x		=	/
Total Millage				=	

Minimum Millage Required by
Amendment 74

Minimum Millage to be Levied (Greater of
above)

CERTIFICA-
TION:

=

=

Signatures

8. Proration of minimum millage by tax source if applicable:
- a. Millage to be levied
- b. Divided by total previous millage
- c. Equals multiplier
- d. Compute each tax source or levied millage in the following table:

Tax Source	Previous Millage	x	Multiplier	=	Adjusted Rounded Millage/Mill- age
		x		=	/
		x		=	/
		x		=	/
		x		=	/
		x		=	/
		x		=	/
		x		=	/
Total Millage				=	

9. TOTAL MILLAGE TO BE LEVIED

CERTIFICA-
TION:

Signatures _____

History. Acts 1981, No. 848, § 3; A.S.A. 1947, § 84-493.2.

CASE NOTES

Cited: Barker v. Frank, 327 Ark. 589, 939 S.W.2d 837 (1997).

26-26-405. Personal property interim millage adjustment.

(a) Revenues derived from personal property by each taxing unit in the county are to be frozen at the base-year levels. The millage applied to personal property only is then adjusted downwards in the same proportion that the assessment base increases. The current millage is defined as the millage that was used in each taxing unit to derive the base-year revenues for personal property. This procedure shall be followed each year until the personal property millage rate is equal to or lesser than the millage rate applied to real estate, at which time the interim adjustment is complete, and both personal property and real estate shall thereafter be taxed at the same millage rate.

(b) In calculating the interim millage, all millage will be rounded up only to the nearest one-tenth (1/10) mill or to four (4) places to the right of the decimal.

(c) The adjustment shall be performed by the county clerk at the conclusion of all due process proceedings, or by the second Monday in November, whichever is earlier. The county clerk shall then certify the interim personal property millage rate by taxing unit to the county quorum court by the third Monday in November for certification of all millage rates.

(d) The county clerk shall file and record the completed form required by this section. The county clerk shall forward a copy of the form to the Assessment Coordination Department by December 1 of each year where an interim millage is used, or the year of final adjustment.

PERSONAL PROPERTY INTERIM MILLAGE ADJUSTMENT

COUNTY: _____
TAXING UNIT: _____
DATE: _____

Data Needed For Calculation

- 1. Base year revenues _____
- 2. Previous year assessment base _____
- 3. New assessment base _____

4. Current millage by tax source:

Maintenance & Operations	_____
Bonds or Debt Service	_____

Others	_____

Millage Adjustment Calculations

1. Determination of assessment base growth factor:

Previous		New	
Assessment Base	÷	Assessment Base	= Growth Factor
_____	÷	_____	= _____

2. Millage adjustments by tax source:

Growth Factor	x	Current Millage	=	Interim Millage/Rounded To
M & O	x	_____	=	/
Bonds	x	_____	=	/
	x	_____	=	/
	x	_____	=	/
Other	x	_____	=	/
	x	_____	=	/
	x	_____	=	/
TOTAL INTERIM MILLAGE _____				

3. Verification:

Total Interim Millage	x	New Assessment Base	=	Revenue
_____	x	_____	=	_____

History. Acts 1981, No. 848, § 4; A.S.A. 1947, § 84-493.3.

CASE NOTES

Divergence From Formula.

Section 26-26-409 does not give the Assessment Coordination Division the authority to vary the specific terms of this subchapter or to adopt a formula directly

at odds with that contained in this section. Crane v. Newark School Dist. No. 33, 303 Ark. 650, 799 S.W.2d 536 (1990). Cited: Clark v. Union Pac. R.R., 294 Ark. 586, 745 S.W.2d 600 (1988).

26-26-406. Tax adjustment procedure.

The following tax adjustment procedure must be completed by the county clerk on or before the third Monday in November, after all due process proceedings of the county equalization board and county court. Upon completion, the county clerk shall record and file the original, sending certified copies to the county quorum court and the Assessment Coordination Department by the third Monday in November.

Public Utility and Regulated Carrier Property Tax Adjustment
Procedure For the Year ____
for

(Company Name)
in

(Taxing Unit)

(County)

- I. Calculating Base Year Taxes:
 - a. Base year total assessment: _____
 - b. Base year millage rate prior to rollback: _____
 - c. Base year taxes (line a x b); _____
- II. Calculating Current Year Taxes:
 - a. Current year total assessment: _____
 - b. Current year millage rate after rollback: _____
 - c. Current year taxes (Line a x b); _____
- III. Property Tax Adjustment Time Frame:
 - a. Base year: _____
 - b. First five-year adjustment period:

Adjustment Year	Year Date	
1	_____	1st Year After Base Year
2	_____	2nd Year After Base Year
3	_____	3rd Year After Base Year
4	_____	4th Year After Base Year
5	_____	5th Year After Base Year

- c. Second five-year adjustment period:

Adjustment Year	Year Date	
6	_____	6th Year After Base Year

Adjustment Year	Year Date	
7		7th Year After Base Year
8		8th Year After Base Year
9		9th Year After Base Year
10		10th Year After Base Year

IV. Property Tax Calculations:

- a. First five-year adjustment period:
 - 1. Are current year taxes from Item II greater than base year taxes from Item I?
 - a. ____ Yes. Then Current Year Taxes only are to be billed and the adjustment process is complete.
 - b. ____ No. Then Base Year Taxes only are to be billed.
 - b. Second five-year adjustment period:
 - 1. Are current year taxes (from Item II) greater than base year taxes (from Item I)?
 - a. ____ Yes. Then Current Year Taxes only are to be billed and the adjustment process is complete.
 - b. ____ No. Then complete the following adjustment process to calculate the adjusted tax due.
 - 2. Tax due adjustment procedure:

Adj. Year	Base Year Taxes	-	Current Year Taxes	x	Ad- just. Fac- tor	+	Cur- rent Year Taxes	=	Adjusted Tax Due
6		-		x	.80	+		=	
7		-		x	.60	+		=	
8		-		x	.40	+		=	
9		-		x	.20	+		=	
10		-		x	Ø	+		=	

History. Acts 1981, No. 848, § 5; A.S.A. 1947, § 84-493.4.

26-26-407. Valuation of different types and uses of property.

- (a) Residential property used solely as the principal place of residence of the owner shall be assessed in accordance with its value as a residence, so long as the property is used as the principal place of residence of the owner and shall not be assessed in accordance with some other method of valuation until the property ceases to be used for the residential purpose.
- (b)(1)(A) Agricultural land, pasture land, and timber land valuation shall be based on the productivity of the agricultural land, pasture land, or timber land soil.

(B) Agricultural land, pasture land, and timber land guidelines shall be developed based on the typical or most probable use of the soils for agricultural land, pasture land, and timber land in the region.

(2) Land that is enrolled in the Wetlands Reserve Program of the Natural Resources Conservation Service of the United States Department of Agriculture or in the Conservation Reserve Program of the Natural Resources Conservation Service of the United States Department of Agriculture shall be treated as agricultural land, pasture land, or timber land for purposes of valuation.

(c)(1) Commercial land and residential land that are vacant shall be valued on their typical use.

(2) The county assessor shall determine what the typical use of vacant commercial land or residential land is by considering the primary current use of adjacent lands.

(d)(1) For real property in which the mineral estate and surface estate are severed, if a surface estate owner's use and enjoyment of the surface estate are adversely affected by a severed mineral estate owner's use and enjoyment of the severed mineral estate, or a surface estate owner's utility of the surface estate interest is adversely affected by a severed mineral estate owner's use and enjoyment of the severed mineral estate, the assessment of the surface estate is as follows:

(A) For agricultural land, pasture land, or timber land, a well drilled for the purpose of extracting minerals from a severed mineral estate creates a presumption of diminished utility of the surface estate, and the assessed value of the affected surface estate shall reflect the minimum productivity value of the surface estate and shall be reduced accordingly; and

(B) For residential property and commercial property, a well drilled for the purpose of extracting minerals from a severed mineral estate creates a presumption of diminished utility of the surface estate, and the assessed value of the affected surface estate shall reflect the diminished utility of the surface estate and reduced accordingly.

(2) Unless market evidence indicates an increase in land area value or an increase in value of the surface estate, the portion of the surface estate for which a presumption of diminished utility exists under subdivision (d)(1) of this section shall not exceed one (1) acre per well, and the value of the surface estate for that one (1) acre shall be assessed in an amount not to exceed twenty-five percent (25%) less than surrounding comparable property.

(e)(1) The county equalization board may reclassify land upon proof of change in use of the land or upon proof that the land is not eligible for classification under the provisions of this section.

(2) The owner may appeal the decisions of the county assessor and county equalization board as provided by law for other appeals from the county assessor or county equalization board.

(f)(1) In devising and developing methods of assessing and levying the ad valorem property tax on real property, the Assessment Coordi-

nation Department shall annually develop and publish valuation tables and other data that shall be used by county assessors for assessing lands qualifying under this subchapter.

(2)(A) Each year the Assessment Coordination Department shall update the valuation tables for assessing lands qualifying as agricultural land, pasture land, and timber land in time for counties to use the updated tables when they finish their countywide appraisals.

(B) When there is a countywide reappraisal, a county shall assess agricultural land, pasture land, and timber land based upon the updated land values in the valuation tables issued for the assessment year.

(3)(A) The Assessment Coordination Department by rule shall develop appropriate formulas reflecting the productivity valuation of the land based upon income capability attributable to agricultural land, pasture land, and timber land soils.

(B) Each year the Assessment Coordination Department shall develop and calculate capitalization rates by using appropriate long-term federal security rates, risk rates, management rates, and other appropriate financial rates.

(C) However, the capitalization rate developed under subdivision (f)(3)(B) of this section shall not be less than eight percent (8%) nor more than twelve percent (12%).

(4) By October 15 of each year, the Assessment Coordination Department shall report to the Legislative Council any changes to any part of the formula used to determine the value of land or the capitalization rate.

(g)(1) Whenever land that has qualified for valuation on use or productivity under subsection (b) of this section is converted to another use, the person converting the land to another use shall notify, immediately and in writing, the county assessor of the change in use.

(2) At the appropriate time, the county assessor shall extend the taxes on the land based on the change in use and shall certify to the county collector the amount to be collected.

(h)(1) If any person shall fail to give written notice of a change in use of land as required in subsection (g) of this section, the person shall be subject to a penalty in an amount equal to three (3) years of taxes on the land at the value in the new use or conversion use.

(2) Any penalty so assessed shall be included in the taxes on the land for the year in which the failure is discovered and shall be a lien on the land to the same extent as any other taxes levied on the land.

(i) Any funds derived from penalties assessed pursuant to subsection (h) of this section shall be deposited into the county general fund to be used for the purposes prescribed by law.

History. Acts 1981, No. 848, § 6; A.S.A. 1947, § 84-493.5; Acts 2005, No. 1432, § 1; 2007, No. 660, § 1; 2007, No. 994, § 1; 2009, No. 655, §§ 2, 3.

Amendments. The 2009 amendment

substituted "county assessor shall" for "assessor must" in (c)(2); in (f), substituted "Each year" for "Effective for assessment years beginning January 1, 2008, and every year thereafter" in (f)(2)(A) and

(f)(3)(B), deleted “Beginning January 1, 2008” in (f)(2)(B), and deleted “Effective for assessment years beginning January 1, 2008” in (f)(3)(A); and made related and minor stylistic changes.

Cross References. Assessment of

residential property and agricultural, pasture, timber, residential, and commercial land, Ark. Const., Art. 16, § 15.

Property taxed according to value — Procedures for valuation — Tax exemptions, Ark. Const., Art. 16, § 5.

CASE NOTES

ANALYSIS

Applicability.
Assessment According to Use.

Applicability.

Where there is no evidence an appraisal occurred as a result of a countywide or statewide reappraisal of property by one of the four methods listed in § 26-26-401, this section does not apply. *Gazaway v.*

Greene County Equalization Bd., 314 Ark. 569, 864 S.W.2d 233 (1993).

Assessment According to Use.

Argument that if residential property of the owner and vacant residential property are to be assessed according to their use, so should residential rental property, held without merit. *Gazaway v. Greene County Equalization Bd.*, 314 Ark. 569, 864 S.W.2d 233 (1993).

26-26-408. Implementation of millage rollback in fringe school districts.

(a) As used in this section, “fringe school districts” means those school districts whose boundaries extend across one (1) or more county lines.

(b) When there is a statewide or countywide reappraisal of property for ad valorem tax purposes pursuant to court order or pursuant to law enacted by the General Assembly, the millage rollback for fringe school districts will be implemented as follows: That part of the school district in a county reappraised first will be rolled back in accordance with procedures prescribed in this subchapter, and taxes will be levied at that millage rate until such time as a similar reappraisal is completed in the other counties in which the school district lies and the millage in those counties is rolled back in accordance with this subchapter at which time the rolled back millage for the first part of the school district that has been reappraised and the rolled back millage for each succeeding part of the school district that has been reappraised shall be averaged, weighted by the percentage of the total assessment of the school district that each part consists of in order to create a weighted average millage, and thereafter the weighted average millage for the school district will be the millage rate levied in the whole school district.

History. Acts 1981, No. 848, § 7; A.S.A. 1947, § 84-493.6.

CASE NOTES

Cited: *Frank v. Barker*, 341 Ark. 577, 20 S.W.3d 293 (2000)

26-26-409. Rules and regulations.

The various state agencies having authority and responsibility with respect to the implementation of the provisions of Arkansas Constitution, Amendment 59, and the provisions of this subchapter or any other laws enacted to carry out the purpose and intent of Arkansas Constitution, Amendment 59, are authorized and directed to adopt appropriate rules, regulations, and guidelines to assure that the intent and purpose of Arkansas Constitution, Amendment 59, and the laws designed to implement and carry out its purposes are effectively and efficiently carried out during the transitional period.

History. Acts 1981, No. 848, § 9; A.S.A. 1947, § 84-493.8.

Publisher's Notes. Amendment 59, referred to in this section, repealed Ark. Const., Art. 16, § 5, and substituted a new

section therefor which appears as Ark. Const., Art. 16, § 5, in the text of the Constitution. The amendment also added Ark. Const., Art. 16, §§ 14-16, which appear in the text of the Constitution.

CASE NOTES

Authority of Division.

This section does not give the Assessment Coordination Division the authority to vary the specific terms of this subchap-

ter or to adopt a formula directly at odds with that contained in § 26-26-405. *Crane v. Newark School Dist.* No. 33, 303 Ark. 650, 799 S.W.2d 536 (1990).

26-26-410. [Repealed.]

Publisher's Notes. This section, concerning revised millage rate forms produced by the Assessment Coordination Division, was repealed by Acts 2003 (2nd

Ex. Sess.), No. 28, § 5 and No. 105, § 7. The section was derived from Acts 1997, No. 1300, § 23.

SUBCHAPTER 5 — COUNTY ASSESSORS

SECTION.

26-26-501. [Repealed.]

26-26-502. Deputy county assessors.

SECTION.

26-26-503. Appointment and training of personnel.

Cross References. Failing or neglecting to make property appraisals, § 26-2-105.

Failure to list and value property for taxation, § 26-2-106.

Nonperformance of duty by assessor, § 26-2-108.

Effective Dates. Acts 1929, No. 172, § 4: approved Mar. 22, 1929. Emergency clause provided: "It is ascertained and hereby declared that the present system of assessing property for taxation is defective, unfair, unjust and inequitable; that the changes herein contemplated are necessary in order to bring about a more

equitable distribution of the costs of government, so that the immediate operation of the Act is essential for the preservation of the public peace, health and safety, and an emergency is therefore declared, and this Act shall take effect and be in force from and after its passage."

Acts 1931, No. 120, § 3: Jan. 1, 1932.

Acts 1977, No. 186, § 3: Feb. 17, 1977. Emergency clause provided: "It is hereby found and determined that in some counties of the State, the county revenue office is not located near the assessor's office and that it would be advantageous to the taxpayers, the county and the State for the

assessor to be authorized to deputize one or more employees in the county revenue office to assess and list for assessment the personal property of taxpayers who come to the revenue office to register vehicles and attend other business; that this Act is designed to permit the assessor to deputize county revenue office employees to perform this service for the taxpayers and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1980 (1st Ex. Sess.), No. 48, § 5: Jan. 30, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that a court ordered statewide reappraisal of property for ad valorem tax purposes will commence on January 1, 1980; that it will be necessary for the various counties to employ qualified personnel to accomplish such appraisal, and that this Act should be given effect immediately to permit the employment of such personnel and to assure that the personnel so employed are

properly trained to appraise property in the area. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, Nos. 389, 392, § 4: Mar. 18, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 48 of the First Extraordinary Session of 1980 was intended to require the persons employed by elected county assessors to conduct appraisals of property to be certified by the Assessment Coordination Division as meeting standards set forth by the Assessment Coordination Division; that Act 48 was never intended to require elected county assessors themselves to be so certified; and that this Act is immediately necessary to eliminate the confusion which has arisen regarding the application of Act 48. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

26-26-501. [Repealed.]

Publisher's Notes. This section, concerning duties generally, was repealed by Acts 1999, No. 933, § 1. The section was derived from Acts 1929, No. 172, § 7;

1931, No. 120, § 1; Pope's Dig., § 13658; Acts 1965, No. 474, § 1; 1983, No. 173, § 1; A.S.A. 1947, § 84-414.

26-26-502. Deputy county assessors.

The county assessor in each county, with the approval of the Director of the Department of Finance and Administration, is authorized to deputize one (1) or more full-time or part-time clerks or other employees in the county revenue office and to authorize these deputies to assess personal property or to list personal property for assessment for ad valorem taxes.

History. Acts 1977, No. 186, § 1; A.S.A. 1947, § 84-416.1.

26-26-503. Appointment and training of personnel.

(a) The county assessor in each county may employ such personnel as the county assessor deems necessary to reappraise taxable property in the county in compliance with the court order in *Arkansas Public Service Commission, et al. v. Pulaski County Board of Equalization, et al.* and to thereafter maintain a proper appraisal of property in the county.

(b)(1)(A) The Assessment Coordination Department shall prescribe an appropriate course of training to qualify persons employed by elected county assessors to conduct appraisals of property for ad valorem tax purposes and shall issue a certificate of qualification to each person who successfully completes the course of training or is otherwise determined by the department to be qualified to conduct appraisals.

(B)(i) Only those persons who hold certificates of qualification issued by the department as provided for in this section shall be employed by the elected county assessors for or undertake the appraisal of property for ad valorem tax purposes in any county.

(ii) This section only applies to persons employed by elected county assessors, and the elected county assessors are not themselves required to be certified by the department.

(2) The department shall seek the advice of the Legislative Council prior to the final adoption of training criteria for persons to be employed by county assessors to appraise property for ad valorem tax purposes.

History. Acts 1980 (1st Ex. Sess.), No. 48, §§ 1-3; 1985, No. 389, §§ 1, 2; 1985, No. 392, §§ 1, 2; A.S.A. 1947, §§ 84-414.1 — 84-414.3.

Publisher's Notes. Arkansas Public

Service Commission, et al. v. Pulaski County Board of Equalization, et al., referred to in this section, is reported in 266 Ark. 64, 582 S.W.2d 942 (1979).

SUBCHAPTER 6 — PROFESSIONAL APPRAISERS

SECTION.

26-26-601 — 26-26-607. [Repealed.]

Effective Dates. Acts 2001, No. 590, § 2: Mar. 7, 2001. Emergency clause provided: "It is found and determined by the General Assembly that conflicting provisions exist within the Arkansas Code concerning the procedures for hiring professional appraisers. Counties in the State of Arkansas are in the process of contracting with professional appraisers and it is required that reappraisal management plans be filed with the Assessment Coordination Department no later than July 1

of the year preceding the commencement of the reappraisal. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the

veto is overridden, it shall become effective on the date the last house overrides the veto."

26-26-601 — 26-26-607. [Repealed.]

Publisher's Notes. This subchapter, concerning professional appraisers, was repealed by Acts 2001, No. 590, § 1. The subchapter was derived from the following sources:

26-26-601. Acts 1949, No. 351, § 1; A.S.A. 1947, § 84-468.

26-26-602. Acts 1949, No. 351, § 2; A.S.A. 1947, § 84-469.

26-26-603. Acts 1949, No. 351, § 3; A.S.A. 1947, § 84-470.

26-26-604. Acts 1949, No. 351, § 4; A.S.A. 1947, § 84-471.

26-26-605. Acts 1949, No. 351, § 5; A.S.A. 1947, § 84-472.

26-26-606. Acts 1949, No. 351, § 6; A.S.A. 1947, § 84-473.

26-26-607. Acts 1949, No. 351, § 7; A.S.A. 1947, § 84-474.

SUBCHAPTER 7 — LISTS — ABSTRACTS — BOOKS — RECORDS

SECTION.

26-26-701. Furnishing of lists, blanks, and records.

26-26-702. Abstracts of tracts and lots of land furnished county assessor.

26-26-703. Exempt lands to be abstracted.

26-26-704. Land book and list.

26-26-705. School district lists.

26-26-706. Lists of motor vehicle licenses.

26-26-707. List of building permits.

26-26-708. List of contracts, deeds, leases.

26-26-709. Other instruments conveying real estate.

26-26-710, 26-26-711. [Repealed.]

26-26-712. Employees' names furnished on demand.

SECTION.

26-26-713. Filing of required lists.

26-26-714. Preservation of assessment lists.

26-26-715. Information gathered by county assessor.

26-26-716. Assessment reports filed with county clerk.

26-26-717. Accurate description of all tracts required.

26-26-718. Duty to account for all realty.

26-26-719. Irregular or incomplete descriptions.

26-26-720. Correcting descriptions already on books.

26-26-721. Checking for nonpayment of delinquent taxes.

Cross References. Tax books and records generally, § 26-28-101 et seq.

Unit tax ledger system, § 26-28-201 et seq.

Preambles. Acts 1887, No. 13 contained a preamble which read: "Whereas, 1st. Lands have been sold to the State under proceedings purporting to have been had in the courts of this State by virtue of an Act of the General Assembly thereof entitled "An Act to enforce the payment of Overdue Taxes," approved

March 12, 1881, when the taxes for the alleged nonpayment of which such lands were so sold under said proceedings and decrees of said courts, had been in fact paid prior to any such sales, proceedings or decrees of said courts; and,

"Whereas, 2d. Also the lands of many other persons were under like proceedings and decrees aforesaid had, by virtue of said act, sold to the State, where the owners thereof had paid taxes which they supposed were on such lands of their own,

but which taxes so paid, owing to an erroneous description in the numbers of the same afterwards were ascertained to be on other lands than their own, and their lands sold to the State as aforesaid; and,

"Whereas, 3d. Said overdue tax act was a novel proceeding in this State that was productive of hardships in other respects, and it is but just to them that the owners of land at the time of such sale to the State, should have a limited time to redeem the same therefrom, without loss to the State, provided said lands shall not have been sold by the State prior to any such application to redeem;

"Now, therefore...."

Acts 1945, No. 211 contained a preamble which read: "Whereas, the County assessors are now forced under Section 13653 of Pope's Digest of 1937 [§ 26-26-1202] to put a valuation on all land, lots and parts of lots subject to taxation, and

"Whereas, the assessor put a valuation on the assessment record of the land, lots, and parts of lots that has been certified to the State of Arkansas for the nonpayment of the delinquent taxes thereon, and the County Clerk in copying the valuations from the assessment record to the tax records, get a valuation on the forfeited land, lots and parts of lots, and extends taxes against said forfeited land, lots and parts of lots and no taxes should be extended as long as it remains against said property in the State Land Office, and to correct these errors and to help the County Clerks of the various counties of the State of Arkansas, to get their tax records correct...."

Acts 1953, No. 235 contained a preamble which read: "Whereas, numerous owners of real estate fail to receive their tax statements through incorrect addresses on the tax books, thereby permitting their property to go delinquent; and

"Whereas, certain real estate and the improvements thereon do not appear on the tax books with the result that the owners thereof avoid the payment of taxes, thereby penalizing others who carry an additional tax burden.

"Now, therefore...."

Acts 1969, No. 38 contained a preamble which read: "Whereas, the 1967 regular session of the General Assembly enacted laws providing for the issuance of motor vehicle licenses on a twelve-month stag-

gered basis, and

"Whereas, existing laws of the State require each motor vehicle owner to submit proof of the assessment of the motor vehicle as a condition of the issuance or the renewal of the license thereon; and

"Whereas, the issuance and renewal of motor vehicle license plates on a twelve-month staggered basis is working extreme hardship upon the county assessors in discovering and assessing motor vehicles and other personal property within the scheduled time provided for assessment of property;

"Now therefore...."

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

Acts 1887, No. 92, § 58: effective on passage.

Acts 1903, No. 142, § 3: effective on passage.

Acts 1911, No. 19, § 2: effective on passage.

Acts 1919, No. 147, § 18: approved Mar. 1, 1919. Emergency clause provided: "That Act 234 of the Acts of 1917 and Act 124 of the Acts of 1913, and all other laws in conflict herewith, are hereby repealed, and this Act, being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this Act shall take effect and be in force from and after its passage."

Acts 1929, No. 111, § 14: approved Mar. 9, 1929. Emergency clause provided: "All laws and parts of laws in conflict herewith are hereby repealed, and this act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage."

Acts 1929, No. 172, § 4: approved Mar. 22, 1929. Emergency clause provided: "It is ascertained and hereby declared that the present system of assessing property for taxation is defective, unfair, unjust and inequitable; that the changes herein contemplated are necessary in order to bring about a more equitable distribution of the costs of government, so that the immediate operation of the Act is essential for the preservation of the public peace, health and safety, and an emergency is therefore declared, and this Act shall take effect and be in force from and after its passage."

Acts 1931, No. 72, § 2: approved Mar. 2, 1931. Emergency clause provided: "As the time for the preparation of said books by said Clerks for delivery to the respective Assessors of the various counties of the State is limited, and work thereon will necessarily have to begin at once by said Clerk, so that it appears to the General Assembly that the immediate operation of this Act is essential for the immediate preservation of the public peace, health and safety, and an emergency is hereby declared to exist, and this Act shall take effect and be in force from and after its passage."

Acts 1935, No. 170, § 12: Mar. 21, 1935. Emergency clause provided: "Whereas the status of the tax forfeiture laws of this State are such as to encourage tax delinquencies and has greatly decreased the efficient operation of the schools and various governmental functions, now, therefore, an emergency is declared and this Act being necessary for the immediate preservation of the public peace, health, and safety, it shall become effective immediately upon its passage and approval."

Acts 1997, No. 974: January 1, 1998.

RESEARCH REFERENCES

Am. Jur. 72 Am. Jur. 2d, State Tax., § 725 et seq.

C.J.S. 84 C.J.S., Tax., § 454 et seq.

26-26-701. Furnishing of lists, blanks, and records.

(a)(1) The Arkansas Public Service Commission shall prepare and furnish, at the proper time, to the county clerks in this state copies for all lists, blanks, and records to be used in the assessment, extension, and collection of taxes, and the county clerk shall have all lists, blanks, and records made at the expense of the county.

(2) This subsection shall not apply to poll tax receipts.

(3) No lists, blanks, or records shall be used by any official in the assessment, extension, or collection of taxes except as shall have had the approval of the commission.

(b) On or before January 1 of each year, the county clerk shall furnish to the county assessor all lists, blanks, and records necessary for the assessment of all real and personal property for the year, all of them to be prepared as provided by law unless otherwise directed by the commission.

History. Acts 1919, No. 147, § 3; C. & M. Dig., § 9880; Acts 1929, No. 172, § 8; Pope's Dig., § 13648; A.S.A. 1947, § 84-401.

A.C.R.C. Notes. The authority of the Arkansas Public Service Commission with respect to the equalization and assess-

ment of property and the administration of tax laws, except with respect to public utilities and carriers, was transferred to the Assessment Coordination Department by Acts 1997, No. 436. See §§ 25-28-102 and 25-28-103.

CASE NOTES

Extensions.

This section amends by necessary implication § 26-28-103, relating to extension of taxes. *Lambert v. Reeves*, 194 Ark.

1109, 110 S.W.2d 503 (1937), modified, 194 Ark. 1123, 112 S.W.2d 33 (Ark. 1938).

This section conferred authority on the commission to change the form of tax

books so as to omit blank spaces for the extension in dollars and cents of the amounts due the state and its various subdivisions, and since, acting under this authority, the commission had, for a number of years, approved forms of tax books omitting such extension, failure of a

county clerk to make such an extension did not render a tax sale based thereunder void. *Lambert v. Reeves*, 194 Ark. 1109, 110 S.W.2d 503 (1937), modified, 194 Ark. 1123, 112 S.W.2d 33 (Ark. 1938); *Kansas City Life Ins. Co. v. Moss*, 196 Ark. 553, 118 S.W.2d 873 (1938).

26-26-702. Abstracts of tracts and lots of land furnished county assessor.

(a) On or before January 1 of each year, the county clerk of each county shall make out and deliver to the county assessor, in books prepared for that purpose, an abstract containing a description of each tract or lot of land situated within the boundaries of any city or town and additions thereto which have been regularly platted into lots and blocks. In the case of real estate situated within the boundaries of any city or town and additions thereto which have been regularly platted into lots and blocks, the county clerk shall proceed according to the plan or plat thereof, commencing with the lowest number of the block and lot of each city, town, or addition and proceed numerically with all lots in a block and all blocks in a city, town, or addition until completed.

(b) On or before January 1 of each year, the county clerk shall make out and deliver to the county assessor, in books prepared for that purpose, an abstract containing a description of each tract of land situated outside the boundaries of any city or town and additions thereto which have been regularly platted into lots and blocks. In case of acreage land, he or she shall commence the abstract in the lowest number in township and range in his or her county, and in the northeast corner of each township, and shall proceed numerically with all sections, townships, and ranges in his or her county first setting down all the subdivisions of each section as they belong to different individuals or the whole section together if owned by one (1) person and not divided on account of parcels being of different value.

(c) The abstract in each case shall show the name of the owner, if known, and the number of acres or quantity of land contained in each call.

(d) No failure to observe any of these requirements shall be held to vitiate any assessment if the lands are so described as to be identified.

History. Acts 1883, No. 114, § 85, p. 199; 1887, No. 92, § 35, p. 143; C. & M. Dig., § 9879; Acts 1929, No. 172, § 9; 1931, No. 72, § 1; Pope's Dig., § 13649; A.S.A. 1947, § 84-402.

Cross References. All lands on list furnished by clerk to be assessed, § 26-28-107.

CASE NOTES

ANALYSIS

Contiguous Tracts.
Duties of County Clerks.
Mineral Interests.

Contiguous Tracts.

Tax sale was not invalidated by fact that two contiguous forty-acre tracts were listed separately in assessment book while county clerk in making up tax book combined the two tracts into one tract of 80 acres. *Coulter v. Anthony*, 228 Ark. 192, 308 S.W.2d 445 (Ark. 1957).

Duties of County Clerks.

Duties of county clerks prior to 1929 amendment. *Rives v. Woodruff County*, 179 Ark. 1110, 20 S.W.2d 184 (1929).

Mineral Interests.

Mineral interests severed from the soil are to be arranged according to the land assessments, and not alphabetically by names of owners. *Sorkin v. Myers*, 216 Ark. 908, 227 S.W.2d 958 (1950).

Tax title obtained on mineral interests was void where names of owners were listed alphabetically under each school district instead of by section, township, and range. *Stienbarger v. Keever*, 219 Ark. 411, 242 S.W.2d 713 (1951).

Tax sale of severed mineral interest not subjoined to surface assessment is not valid. *Blackburn v. Cline*, 8 Ark. App. 108, 650 S.W.2d 588 (1983).

Cited: *Selrahc Ltd. P'ship v. Seeco, Inc.*, 2009 Ark. App. 865, — S.W.3d — (2009).

26-26-703. Exempt lands to be abstracted.

Lands of the United States or of Arkansas, or lands otherwise exempt from taxation, shall be entered upon the abstract in the name of the owner.

History. Acts 1883, No. 114, § 85, p. 199; C. & M. Dig., § 9883; Pope's Dig., § 13650; A.S.A. 1947, § 84-403.

26-26-704. Land book and list.

(a) To facilitate the assessment and collection of taxes, the county court of each county shall procure and keep a land book or books of maps of all the townships or fractional townships in the county. The book shall be well-bound and shall be deposited in the office of the county clerk.

(b) The court shall also procure a list of the lands owned by the United States and by this state in their respective counties.

History. Acts 1883, No. 114, § 85, p. 199; C. & M. Dig., § 9885; Pope's Dig., § 13651; A.S.A. 1947, § 84-404.

26-26-705. School district lists.

(a) The school directors of each and every school district in the state shall furnish to the county assessor a complete list, showing addresses alphabetically arranged, of all persons who under the law should be taxpayers in the school district.

(b) The various school boards are authorized to pay out of the school funds of the district the expense incurred in the preparation of the list.

History. Acts 1929, No. 111, § 3; Pope's Dig., §§ 11540, 13627; A.S.A. 1947, § 84-405.

CASE NOTES

Expenses.

Where six school districts cooperatively employed a tax representative to prepare the list required by this section, there was

authority to pay the expense incurred in preparation of the list. *Burnett v. Nix*, 244 Ark. 235, 424 S.W.2d 537 (1968).

26-26-706. Lists of motor vehicle licenses.

(a) The Director of the Department of Finance and Administration shall institute a system in which the county assessor and the county collector shall notify the director that a vehicle owner has assessed a vehicle and has paid all personal property taxes that were due by the preceding October 15. Upon receipt of the notification, the director shall renew the vehicle license.

(b) Notification by the county assessor and the county collector under subsection (a) of this section shall be in the form of an electronic notation placed on or removed from the Department of Finance and Administration's vehicle license record by the county assessor and the county collector denoting that the vehicle has been assessed and that the vehicle owner does not owe delinquent personal property taxes.

History. Acts 1969, No. 38, §§ 1, 2; A.S.A. 1947, §§ 84-406, 84-406.1; Acts 1997, No. 974, § 5; 2011, No. 175, § 4.

A.C.R.C. Notes. Acts 1997, No. 974, § 19, codified as § 27-13-103, provided: "The Director of the Department of Finance and Administration shall have the authority to promulgate such regulations

as are necessary to implement and administer the provisions of this Act."

Amendments. The 2011 amendment, in (a), deleted "On or before January 1, 1999" at the beginning and substituted "October 15" for "October 10"; and, in (b), inserted "under subsection (a) of this section" and deleted the last sentence.

26-26-707. List of building permits.

The city clerks of all cities and municipalities in each county shall prepare and file with the county assessor a list of all building permits issued each year. The list shall be alphabetically arranged, showing the value of the improvements to be made and the names and addresses of the persons making the improvements.

History. Acts 1929, No. 111, § 5; Pope's Dig., § 13629; A.S.A. 1947, § 84-407.

26-26-708. List of contracts, deeds, leases.

(a) The county recorder of deeds and mortgages in each county shall, each year, prepare and file with the county assessor a list, alphabetically arranged in the name of the grantor, or a copy of the following which were recorded during the year, to wit:

(1) All deeds, mortgages, and contracts for the sale of realty;

- (2) All timber deeds or contracts, or mineral or royalty deeds; and
- (3) All leases or contracts of every kind, whether oil and gas or other things leased.

(b) If a list is furnished, it shall reflect the last known business address of the person owning the rights under the contract, deed, or lease, the date, and the consideration.

History. Acts 1929, No. 111, § 6; Pope's Dig., § 13630; A.S.A. 1947, § 84-408; Acts 1989, No. 807, §§ 1, 4.

26-26-709. Other instruments conveying real estate.

(a) When an instrument for the conveyance of real estate, save mortgages and deeds of trust, is tendered to the county recorder for recording, that official shall obtain from the person tendering the instrument the name of the grantee and the address to which the grantee wants future tax statements mailed.

(b) At least weekly the county recorder shall transmit the duplicate statements to the county assessor, who shall keep the original and immediately transmit the copy to the county clerk, together with his or her instructions as to any change in legal description or separation of parcel as they then appear on the tax books.

(c) In counties operating under the unit tax ledger system, the county assessor shall immediately transmit the copy to the county collector, together with his or her instructions as to any change in legal description or separation of parcel as they then appear on the tax books.

(d) Both the county assessor and the county clerk shall make proper entry of the information so received into their permanent records.

(e) Where a plat is offered for record to the county recorder, the person so offering the plat shall tender to the circuit clerk the original for recording and one (1) copy of the plat, which shall be certified to by the circuit clerk, showing the book and page of the records wherein the original is recorded. The certified copy shall be transmitted by the circuit clerk to the county assessor within five (5) days from the date of recording.

History. Acts 1953, No. 235, §§ 1, 2; A.S.A. 1947, §§ 84-408.1, 84-408.2; Acts 1989, No. 807, §§ 2, 4.

26-26-710, 26-26-711. [Repealed.]

Publisher's Notes. These sections, concerning lists of guardians, administrators and employees, were repealed by Acts 1989, No. 807, § 4. They were derived from the following sources:

Acts 1929, No. 111, § 7; Pope's Dig., § 13631; A.S.A. 1947, § 84-409.

Acts 1929, No. 111, § 8; Pope's Dig., § 13632; A.S.A. 1947, § 84-410.

26-26-712. Employees' names furnished on demand.

(a) Any person, partnership, company, or corporation having any person in their employ shall be required to give the name of the employee to the county assessors, county sheriffs, or county collectors of the various counties when demanded by the county assessors, county sheriffs, or county collectors in their official capacity.

(b) Any person, partnership, company, or corporation, their agents, attorneys, or managers that shall violate this section shall be guilty of a violation and shall be fined in any sum not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100).

History. Acts 1903, No. 142, §§ 1, 2, p. 14246; A.S.A. 1947, § 84-413; Acts 2005, 243; 1911, No. 19, § 1, p. 7; C. & M. Dig., No. 1994, § 166.
§§ 10169, 10550; Pope's Dig., §§ 13951,

26-26-713. Filing of required lists.

(a) All lists required in §§ 26-26-705, 26-26-707, and 26-26-708 by clerks, school directors, and others shall be filed with the county assessors of the various counties on the first Monday in January of each year.

(b) The lists shall be filed in triplicate:

(1) One (1) to be forwarded by the county assessor to the Arkansas Public Service Commission;

(2) One (1) to be filed with the county clerk; and

(3) One (1) to be retained by the county assessor.

(c)(1) The list retained by the county assessor shall be checked by him or her and used in his or her endeavor to place all taxable property on the books.

(2) When the county assessor's books are closed, the county assessor shall certify all of the lists to the county court, and the certificate shall show whether the individuals have made an assessment and if not, why not, and what effort the county assessor has put forth in each case to secure an assessment by each individual on the lists.

(d)(1) Upon conviction, any individual, school director, tax commissioner, county assessor, or other person charged with a duty under this section who fails to perform the duty is guilty of a violation and shall be fined in any sum not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

(2) Upon conviction for a second offense, in the case of any public official, the public official shall be removed from office.

(e) The commission shall prepare such forms as will ensure the effective execution of this section.

History. Acts 1929, No. 111, §§ 9, 10; Pope's Dig., §§ 3622, 11541, 13633, 13634; A.S.A. 1947, §§ 84-411, 84-412; Acts 2005, No. 1994, § 166; 2007, No. 827, § 201.

A.C.R.C. Notes. The authority of the Arkansas Public Service Commission with respect to the equalization and assessment of property and the administration of tax laws, except with respect to public utilities and carriers, was transferred to the Assessment Coordination Department

by Acts 1997, No. 436. See §§ 25-28-102 and 25-28-103.

26-26-714. Preservation of assessment lists.

(a) The original assessment lists as made out, sworn to, and delivered to the county assessor by any person or property owner of the county and assessment lists made by the county assessor prior to the date on which the assessment rolls are delivered to the county clerk, together with copies of all assessment lists as made out, sworn to, and delivered to the county clerk by the county assessor or any other person after the assessment rolls have been delivered to the county clerk and before the county collector closes his or her books, shall remain in the office of the county assessor for at least four (4) years after the date upon which they shall have been made, during which time the lists shall be filed by the county assessor in such manner that they may be readily referred to and utilized.

(b) Copies of all assessment lists as made by the county assessor or any other person subsequent to the date on which penalty attached for failure to assess and before the assessment record is required to be filed with the county clerk shall be delivered to the county clerk at the same time the assessment record is filed, which lists, together with the original of all assessment lists as may be filed with the county clerk by the county assessor or any other person after the assessment record has been delivered to the county clerk and before the county collector closes his or her books, shall be preserved by the county clerk for the purpose of checking the tax books to determine if all penalties for failure to assess at the proper time have been properly designated and extended.

History. Acts 1883, No. 114, § 66, p. 172, § 16; Pope’s Dig., § 13677; A.S.A. 199; C. & M. Dig., § 9916; Acts 1929, No. 1947, § 84-445.

CASE NOTES

Applicability.

This section relates to the assessment of personal property and has no applicability to the assessment of real estate. *Evans v.*

F.L. Dumas Store, Inc., 192 Ark. 571, 93 S.W.2d 307 (1936).

Cited: *Aldridge v. Tyrrell*, 301 Ark. 116, 782 S.W.2d 562 (1990).

26-26-715. Information gathered by county assessor.

From time to time, the county assessor shall, by personal inspection and examination of persons, property, or records, gather and record in writing any and all available data and information bearing upon the location, number, amount, kind, and value of any and all property and persons which he or she is by law required to assess. This data and information shall be and remain permanently a part of the records of the county assessor’s office and shall be filed in such manner as may be readily referred to and utilized by the county equalization board, county clerk, county court, or other interested parties.

History. Acts 1929, No. 172, § 17; Pope's Dig., § 13678; A.S.A. 1947, § 84-446.

CASE NOTES

Cited: *Tedford v. Vaulx*, 183 Ark. 240, 35 S.W.2d 346 (1931); *Aldridge v. Tyrrell*, 301 Ark. 116, 782 S.W.2d 562 (1990).

26-26-716. Assessment reports filed with county clerk.

(a)(1)(A) Each year, the county assessor shall, on or before the third Monday in August, file with the county clerk his or her report of assessment of all real property of the county situated within the boundaries of any city or town and additions thereto which have been regularly platted into lots and blocks.

(B) Each year, the county assessor shall, on or before the third Monday in August, file with the county clerk his or her report of assessment of all real property of the county situated outside the boundaries of any city or town and additions thereto which have been regularly platted into lots and blocks.

(2) On or before July 31, the county assessor shall deliver the personal property assessment report or roll book to the county clerk, to be arranged in alphabetical order according to school districts and showing separately in alphabetical order the persons residing outside of incorporated cities and towns and of persons who are residents of incorporated cities and towns of the same school district.

(3) In addition to the other requirements of this section, the county assessors shall be required to list poll and personal property owners to the respective political township and ward in which they reside at the time of the assessment.

(b)(1) These reports shall be filed in books or records of the kind and character furnished to the county assessor by the county clerk for that purpose, unless otherwise directed by the Arkansas Public Service Commission, and each report shall show each item of property by totals in number and value.

(2) The county clerk shall not receive these reports unless they are in a neat and legible manner, and to each of which the county assessor shall have attached his or her oath in the following words:

"I,, Assessor for County, State of Arkansas, do solemnly swear that I have made diligent efforts to ascertain all the taxable property and persons subject to taxation in said county; that so far as I have been able to ascertain, the same is correctly set forth and described in the foregoing report, and that the property therein mentioned is not appraised at less than its true market or actual value, or authorized percentage thereof.

That this record or book is one of records or books constituting the report of assessment or appraisal of all property and

persons of the county which I am by law required to assess or appraise for the year 20...., so help me God.

Sworn to and subscribed before me this day of, 20....., Clerk County."

History.

Acts 1883, No. 114, § 65, p. 199; 1887, No. 92, § 30, p. 143; C. & M. Dig., § 9915; Acts 1929, No. 172, § 18; Pope's Dig., § 13676; Acts 1935, No. 152, § 1; A.S.A. 1947, §§ 84-447, 84-448; Acts 1987, No. 621, § 3.

A.C.R.C. Notes. The authority of the Arkansas Public Service Commission with respect to the equalization and assessment of property and the administration of tax laws, except with respect to public

utilities and carriers, was transferred to the Assessment Coordination Department by Acts 1997, No. 436. See §§ 25-28-102 and 25-28-103.

Cross References. Additional provisions of certificate in counties adopting unit tax ledger system, § 26-28-205.

Error in ownership of property does not affect validity of assessment, § 26-34-102.

Tangible personal property, § 26-26-1401 et seq.

CASE NOTES

ANALYSIS

Affidavit and Oath.

Levy of Taxes.

State Lands.

Affidavit and Oath.

Tax sale of rural land was not void on ground that assessor failed to make affidavit to real estate assessments for the year 1929, where assessor testified that he made an affidavit and a certificate, but testimony did not show what oath was taken or what certificate was made. *Peace v. Tippet*, 195 Ark. 799, 114 S.W.2d 461 (1938).

Title of purchaser of real estate certified to state for nonpayment of taxes was not void because assessor failed to attach to assessment roll the oath prescribed by this section. *Hudson v. Marlin*, 196 Ark. 1070, 121 S.W.2d 91 (1938).

Sale of land to the state for taxes was not void on ground that the assessor failed to attach to his assessment roll the oath prescribed by this section, where attached oath stated that assessor solemnly swore that the foregoing was correct and he had appraised each tract or lot of land, except such as was exempt from taxation, at the per centum of its cash value as agreed upon by the state. *Hargrave v. Williams*, 200 Ark. 66, 138 S.W.2d 1045 (1940).

Actual possession of land, taken and held continuously for statutory period of two years under clerk's tax deed, bars

action against grantee for recovery thereof by prior owners, as provided in §§ 18-60-212 and 18-61-106, even though clerk's affidavit and assessor's reports were insufficient. *Hoch v. Ratliff*, 216 Ark. 357, 226 S.W.2d 39 (1950).

Levy of Taxes.

In action involving the ad valorem assessment of real property, where assessor, after making up his assessment books and an abstract of the assessed property, filed claim with the county clerk, who made out his report in accordance with the assessor's abstract, forwarding the report to the state, during which time the county board of equalization was in session, the action of the quorum court directing taxes be collected from the value established by the assessor was void, since it was without authority to levy millages on any basis other than the assessment of the assessor as equalized and adjusted by the equalization board. *Layne v. Strode*, 229 Ark. 513, 317 S.W.2d 6 (1958).

State Lands.

Assessor's duty to return all lands is not affected by fact that particular lands may have been sold to state. *Crockett v. Bearden*, 203 Ark. 48, 156 S.W.2d 79 (1941).

Cited: *Arkansas Tax Comm'n v. Ashby*, 217 Ark. 759, 233 S.W.2d 361 (1950); *Aldridge v. Tyrrell*, 301 Ark. 116, 782 S.W.2d 562 (1990).

26-26-717. Accurate description of all tracts required.

(a)(1)(A) It shall be the duty of each county assessor to make out, from such sources of information as shall be in his or her power, a correct and pertinent description of each tract or lot of real property in his or her county, so that it can be identified and distinguished from any other tracts or parts of tracts.

(B) The county assessor shall place a value on each subdivision of a block, and the improvements thereon, in cities and towns, or additions thereto, notwithstanding the fact that one (1) individual owns the whole block.

(2)(A) When the county assessor shall deem it necessary to obtain an accurate description of any separate tract or lot in his or her county, he or she may require the owner or occupier to furnish it with any title papers he or she may have in his or her possession.

(B)(i) If the owner or occupier, upon demand made for it, shall neglect or refuse to furnish a satisfactory description of the parcel of real property to the county assessor, he or she may employ the county surveyor to make out a description of the boundaries, and location thereof, and a statement of the quantity of land therein.

(ii) The expense of the survey shall be returned by the county assessor to the county clerk, who shall add the expense of the survey to the tax assessed upon the real property, and it shall be collected by the county collector of the county with the tax. When collected, it shall be paid on demand to the person to whom it is due.

(b)(1) The county assessor shall, in all cases, from actual view or from the best sources of information within his or her reach, determine, as near as practicable, the true value of each separate tract and lot of real property in his or her county, according to the rules prescribed by this chapter for valuing property.

(2) The county assessor shall note in his or her plat book, separately, the value of all houses, mills, and other buildings which shall be carried out as a part of the value of the tracts.

History. Acts 1883, No. 114, § 70, p. 199; C. & M. Dig., § 9928; Pope's Dig., § 13695; A.S.A. 1947, § 84-450.

CASE NOTES**ANALYSIS**

Insufficient Descriptions.
Sufficient Descriptions.

Insufficient Descriptions.

Description as "N., N.E., sec. 3, Town 15, range 6, 87.19 acres" was not description by abbreviations so generally known as to sufficiently describe land. *Cooper v. Lee*, 59 Ark. 460, 27 S.W. 970 (1894).

Description as "west part S.W.S.W. sec. 20, T. 15, range 28, 30 acres, valuation, \$30,000 belonging to a certain company" was insufficient to describe 30 acres belonging to such company where land was not in shape of parallelogram and part of it was outside the southwest quarter of the southwest quarter. *Texarkana Water Co. v. State*, 62 Ark. 188, 35 S.W. 788 (1896).

Tax deed is insufficient that describes

land sold as four-sixths of a certain quarter section without describing the tract sold with sufficient definiteness to locate it without reference to the remainder of the tract. *King v. Booth*, 94 Ark. 306, 126 S.W. 830 (1910).

Claim of property owners in drainage district that numerous descriptions of land in district were fatally defective did not invalidate an assessment where there was no complaint that the description of the petitioners' property was insufficient, since defects and irregularities in assessments could be cured by subsequent orders. *St. Louis S. F. R. Co. v. Subdistrict*, 179 Ark. 567, 17 S.W.2d 299 (1929).

Sale of land for delinquent taxes described as "Part South Half Northwest Quarter" was a void sale for insufficient description of land sold. *Holt v. Reagan*, 201 Ark. 1101, 148 S.W.2d 155 (1941).

Tract of land described as "Accretions, Section 20" was too indefinite and was insufficient to pass title when accretions had been formed to two separate quarter sections of that section. *Sanders v. Plant*, 211 Ark. 913, 204 S.W.2d 323 (1947).

Sufficient Descriptions.

Description of lands in complaint as "W. ½ 6-3-7" and notice described land as "W. ½ section 6, township 3 north, range 7 east" held valid. *Beck v. Anderson-Tulley Co.*, 113 Ark. 316, 169 S.W. 246 (1914).

A description of land by the abbreviations commonly used to designate government subdivisions sufficiently identifies it; however, the use of abbreviations in a tax assessment or notice must be confined to those commonly known or understood. *Beck v. Anderson-Tulley Co.*, 113 Ark. 316, 169 S.W. 246 (1914).

Description "Southwest quarter section 3, township 20- south, range 18 west, 112.28 acres", which included all that part of the quarter section lying within the state of Arkansas, was sufficient against contention that it could not be known what portion of the quarter section was assessed where only other portion of quarter section was in another state. *Alphin v. Banks*, 193 Ark. 563, 102 S.W.2d 558 (1937).

Describing lands as the "NE SE" of a certain section was sufficient notice under the law creating improvement district. *Chestnut v. Harris*, 64 Ark. 580, 43 S.W. 977 (1897); *Kunze v. Blackwood*, 195 Ark. 658, 113 S.W.2d 705 (1938).

Inclusion of letter W following block number in description of property did not render description invalid where there was only one such block in the town and the block embraced the lots in question. *Moseley v. Moon*, 201 Ark. 164, 144 S.W.2d 1089 (1940).

26-26-718. Duty to account for all realty.

It is the duty of the several county assessors of the state to correctly describe according to ownership each parcel of real property in the county, and every acre of land or town or city lot must be accounted for on the assessment roll. In instances where real property is exempt from taxation, either under the Arkansas Constitution or because title is vested in the state, this fact must be noted on the assessment roll with the reason for the exemption. The county clerk must likewise in extending taxes account for every parcel of real property within the county.

History. Acts 1935, No. 170, § 5; Pope's Dig., § 13792; A.S.A. 1947, § 84-449.

Publisher's Notes. Acts 1935, No. 170,

§ 8, provided that this act shall be cumulative to Acts 1933, No. 16, except where in conflict therewith.

CASE NOTES

ANALYSIS

Assessor's Error.
Extension of Taxes.

Assessor's Error.

Where plaintiff went to the assessor's office in good faith attempt to ensure that taxes on his property would be correctly billed and paid, and the assessor's office failed to change ownership of the property, which was subsequently sold by the state land commission for delinquent taxes, plaintiffs' good faith attempt to pay was not defeated by the assessor's mistake; because of the interrelationship of the tax assessor, county clerk, and collector, plaintiff's inquiry at the assessor's office was sufficient notice. *Aldridge v. Tyrrell*, 301 Ark. 116, 782 S.W.2d 562 (1990).

Where landowner did not literally com-

ply with § 26-26-501(a)(2) by delivering a verified list of property but demonstrated substantial compliance with the statute by personally visiting the assessor's office to ensure that the records reflected the change of ownership for the property, and where the assessor's office admitted that they did not do so, tax sale of property was properly set aside. *Aldridge v. Tyrrell*, 301 Ark. 116, 782 S.W.2d 562 (1990).

Extension of Taxes.

Where taxes were extended as follows: "Value of lot, 300; value of improvements, 200; total value 300", assessment was not void for failure to show what the figures represented, since it would be presumed they meant dollars; nor was it void for apparent error. *London v. Montgomery*, 211 Ark. 434, 201 S.W.2d 760 (1947).

26-26-719. Irregular or incomplete descriptions.

(a)(1) It is the duty of a county assessor to strictly follow the provisions of § 26-26-717.

(2) When it is otherwise impossible to correctly describe real property on the assessment roll according to its ownership, it is the duty of a county assessor to petition the county court for a survey of the real property under the provisions of § 26-26-802.

(b)(1) In any case where a tract of land is irregularly described, the county assessor must require the owner to bring in his or her deed.

(2) The tract of land must then be taken from the deed, and the tract of land to be assessed must be platted on a plat book furnished the county assessor by the county court of each township in the county.

(3) The county assessor shall draw a plat of the tract of land and shall number it as "Lot No." and then enter the tract of land on the assessment book as "Lot No. of" describing the section or portion of the section in which the tract of land is found.

(c) It shall be sufficient to advertise the tract of land for failure to pay taxes by the number of the lot assigned to the tract of land.

(d)(1) If for any reason a part description of the real property assessed is made by the county assessor, the reason must be stated, and the county assessor shall immediately certify his or her inability to properly describe the real property to the Commissioner of State Lands on or before October 1 in each year.

(2)(A) The Commissioner of State Lands shall assemble the certificates of part description received from the county assessors and certify them to the Attorney General, who shall file his or her petition in the circuit court having jurisdiction.

- (B) The circuit court is vested with jurisdiction upon the petition to issue any form or writ necessary for ascertaining the correct ownership description of the real property involved.
- (e) Upon petition of the Attorney General addressed to the circuit court having jurisdiction, any county assessor who shall fail or refuse to comply with the provisions of § 26-26-718 and this section shall be removed from office and shall only be reinstated when he or she has performed the duties enjoined but shall receive no compensation for correcting any of his or her acts of omission or commission.

History. Acts 1935, No. 170, § 6; Pope’s Dig., § 13793; A.S.A. 1947, § 84-451.

Publisher’s Notes. As to cumulative effect of Acts 1935, No. 170, see Publisher’s Notes to § 26-26-718.

CASE NOTES

ANALYSIS

Purpose.
Surveys.

Purpose.

Purpose of this section is to furnish descriptions of lands and lots assessed for taxation so that they may be identified by reference to the plat of the survey that has become a public record. *Bracken v. Henson*, 211 Ark. 572, 201 S.W.2d 580 (1947).

Surveys.

Acting under this section, it is the duty of a surveyor to make a survey conforming

to the boundary lines as shown by the title papers. *Bracken v. Henson*, 211 Ark. 572, 201 S.W.2d 580 (1947).

Where surveyor ignores existing boundary lines as described in title papers, lots cannot be properly assessed and sale for delinquent taxes by description according to such a survey would be void. *Bracken v. Henson*, 211 Ark. 572, 201 S.W.2d 580 (1947).

26-26-720. Correcting descriptions already on books.

The Attorney General is authorized to have corrected any part description of lands on the books of the Commissioner of State Lands in the manner provided. This authority shall be exercised upon the application of any applicant to purchase or upon application by the Department of Parks and Tourism, the Arkansas Forestry Commission, or the Arkansas State Game and Fish Commission.

History. Acts 1935, No. 170, § 7; Pope’s Dig., § 13794; A.S.A. 1947, § 84-452.

Publisher’s Notes. As to cumulative effect of Acts 1935, No. 170, see Publisher’s Notes to § 26-26-718.

Cross References. Correcting descriptions of lands when lists in hands of county clerk, § 26-28-111.

26-26-721. Checking for nonpayment of delinquent taxes.

(a)(1) It shall be the duty of the county assessor of each county of the State of Arkansas, after extending the valuation against each parcel of land, lot, and part of lot on his or her assessment record to check it, and for all land, lots, and parts of lots that have been certified to the

Commissioner of State Lands for the nonpayment of the delinquent taxes due, he or she shall stamp or write by the valuation "State of Arkansas", and also the year which it was certified to the state.

(2) The county assessor shall take the list of the land, lots, and parts of lots that have been redeemed or purchased which is certified to the county clerks by the Commissioner of State Lands January of each year and show on his or her assessment record the disposition of the land, lots, and parts of lots.

(b) If the county assessor of the various counties of the State of Arkansas shall need a starting point, he or she can write the Commissioner of State Lands for a list of the forfeited land, lots, and parts of lots in his or her county. Upon such request, the Commissioner of State Lands shall furnish him or her with a correct list of the forfeited land, lots, and parts of lots that have not been redeemed or sold in his or her office. The county clerks of the various counties of the State of Arkansas shall furnish the county assessor a list of the forfeited land, lots, and parts of lots that he or she sends to the Commissioner of State Lands yearly. In this way, the county assessor will have a complete record of the forfeited land, lots, and parts of lots for his or her assessment record.

History. Acts 1945, No. 211, §§ 1, 2;
A.S.A. 1947, §§ 84-461, 84-462.

SUBCHAPTER 8 — SURVEYS AND PLATS

SECTION.

26-26-801. Duties of officials.

26-26-802. Platting subdivisions for assessment purposes.

SECTION.

26-26-803. Designation of tracts.

26-26-804. Compensation of officials.

Effective Dates. Acts 1887, No. 139,
§ 5: effective on passage.

26-26-801. Duties of officials.

(a) It is made the duty of the county clerks to promptly notify the county surveyors of their respective counties of all orders made by their respective county courts in pursuance of this subchapter.

(b) It is the duty of the county recorder of every county to provide and keep in his or her office a record book to be entitled "Record of Surveyor's Plats and Notes", in which he or she shall accurately record or make a fair copy and transcript of every plat and the notes accompanying it returned to him or her by the county surveyor, as provided in this subchapter.

History. Acts 1887, No. 139, § 2, p. 243; C. & M. Dig., §§ 9931, 9932; Pope's Dig., §§ 13696, 13697; A.S.A. 1947, § 84-454.

CASE NOTES

Assessments.

Assessments may be made with reference to the record book. St. Louis S. F. R. Co. v. Subdistrict, 179 Ark. 567, 17 S.W.2d

299 (1929); Holt v. Reagan, 201 Ark. 1101, 148 S.W.2d 155 (1941).

Cited: Sanders v. Plant, 211 Ark. 913, 204 S.W.2d 323 (1947).

26-26-802. Platting subdivisions for assessment purposes.

(a) Whenever it shall be made to appear to the satisfaction of the county court of any county that any section, or part of section of land in the county is in such small or irregular subdivisions as respects ownerships thereof, that the subdivisions or any of them cannot be accurately or conveniently designated in the assessment list or tax list in the usual or ordinary manner of designating subdivisions of land, it shall be the duty of the county court to order the county surveyor of the county to make and return to the county recorder of the county a plat, with accompanying marginal or footnotes, of the section or part section, whereupon it shall be the duty of the county surveyor to promptly comply with and obey such orders.

(b) In the plats and by the marginal or footnotes which he or she shall make and return, he or she shall show the relative size and position of the several subdivisions and the area of each, which subdivisions shall be designated as "lots" and shall be numbered consecutively in like manner and order, insofar as practicable, as is done in the case of fractional sections in the surveys and plats made under the direction of the United States Bureau of Land Management.

History. Acts 1887, No. 139, § 1, p. 243; C. & M. Dig., § 9930; A.S.A. 1947, § 84-453.

26-26-803. Designation of tracts.

When a plat and notes accompanying it of any section or part of section of land shall have been made, returned, and recorded, as provided in this subchapter, a designation by number of a lot therein, either upon the assessment list, the tax book, the delinquent list, or in any tax receipt, certificate of sale, tax deed, or in any other deed or writing shall be held and considered to refer to and as being intended to designate the subdivision of the section or part of section as is of the same number on the plat and the notes accompanying.

History. Acts 1887, No. 139, § 3, p. 243; C. & M. Dig., § 9933; Pope's Dig., § 13698; A.S.A. 1947, § 84-455.

26-26-804. Compensation of officials.

Each of the officials named in this subchapter shall be allowed a reasonable compensation for the services as he or she may be required to perform in pursuance thereof, to be determined by the respective county courts, payable out of the county treasury of the county in which the service shall be rendered.

History. Acts 1887, No. 139, § 4, p. 243; C. & M. Dig., § 9934; Pope's Dig., § 13699; A.S.A. 1947, § 84-456.

SUBCHAPTER 9 — LISTING OF PROPERTY FOR ASSESSMENT

SECTION.

- 26-26-901. Furnishing of forms.
- 26-26-902. Oath of one listing.
- 26-26-903. Owner to list property.
- 26-26-904. Listing by representatives.
- 26-26-905. Persons holding property.
- 26-26-906. Pawnbrokers.
- 26-26-907. Lands sold for taxes.
- 26-26-908. Property converted into non-taxable securities.
- 26-26-909. Credits and stocks which need not be listed.

SECTION.

- 26-26-910. Valuations in listings not conclusive.
- 26-26-911. Inquiries to makers of lists.
- 26-26-912. [Repealed.]
- 26-26-913. Special list of omitted property.
- 26-26-914. Unavoidable failure to list property.

Preambles. Acts 1887, No. 13 contained a preamble which read: "WHEREAS, 1ST. Lands have been sold to the State under proceedings purporting to have been had in the courts of this State by virtue of an Act of the General Assembly thereof entitled 'An Act to enforce the payment of Overdue Taxes,' approved March 12, 1881, when the taxes for the alleged nonpayment of which such lands were so sold under said proceedings and decrees of said courts, had been in fact paid prior to any such sales, proceedings or decrees of said courts; and,

"WHEREAS, 2D. Also the lands of many other persons were under like proceedings and decrees aforesaid had, by virtue of said act, sold to the State, where the owners thereof had paid taxes which they supposed were on such lands of their own, but which taxes so paid, owing to an erroneous description in the numbers of the same afterwards were ascertained to be on other lands than their own, and their lands sold to the State as aforesaid; and,

"WHEREAS, 3D. Said overdue tax act was a novel proceeding in this State that

was productive of hardships in other respects, and it is but just to them that the owners of land at the time of such sale to the State, should have a limited time to redeem the same therefrom, without loss to the State, provided said lands shall not have been sold by the State prior to any such application to redeem;

"Now, therefore...."

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

Acts 1887, No. 92, § 58: effective on passage.

Acts 1929, No. 111, § 14: approved Mar. 9, 1929. Emergency clause provided: "All laws and parts of laws in conflict herewith are hereby repealed, and this act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage."

Acts 1929, No. 172, § 4: approved Mar. 22, 1929. Emergency clause provided: "It is ascertained and hereby declared that the present system of assessing property for taxation is defective, unfair, unjust

and inequitable; that the changes herein contemplated are necessary in order to bring about a more equitable distribution of the costs of government, so that the immediate operation of the Act is essen-

tial for the preservation of the public peace, health and safety, and an emergency is therefore declared, and this Act shall take effect and be in force from and after its passage."

RESEARCH REFERENCES

Am. Jur. 72 Am. Jur. 2d, State Tax., § 725 et seq.

C.J.S. 84 C.J.S., Tax., § 462 et seq.

26-26-901. Furnishing of forms.

Upon the application of the property owner or other person required to file an assessment list, the county assessor shall furnish appropriate blanks upon which to list and report the property required to be listed.

History. Acts 1929, No. 172, § 10; Pope's Dig., § 13662; A.S.A. 1947, § 84-418.

Cross References. Assessment blanks in counties using unit tax ledger system, § 26-28-205.

CASE NOTES

Cited: Summers Chevrolet, Inc. v. Yell County, 310 Ark. 1, 832 S.W.2d 486 (1992).

26-26-902. Oath of one listing.

(a) The county assessors, deputy county assessors, and Arkansas Public Service Commission, or any other officer charged under the law with assessing taxes, shall, when each and every person presents himself or herself to make and prepare a property list, administer the following oath:

"You do solemnly swear that you will well and truly answer all questions that may be asked of you touching on the assessment of your property."

(b) Provided, however, this oath shall not be required of any individual assessing his or her real or personal property by telephone under § 26-26-1114 or where the county assessor lists the property for the property owner as permitted in § 26-26-903.

History. Acts 1929, No. 111, § 1; Pope's Dig., § 13667; A.S.A. 1947, § 84-419; Acts 1991, No. 291, § 3.

A.C.R.C. Notes. The authority of the Arkansas Public Service Commission with respect to the equalization and assess-

ment of property and the administration of tax laws, except with respect to public utilities and carriers, was transferred to the Assessment Coordination Department by Acts 1997, No. 436. See §§ 25-28-102 and 25-28-103.

CASE NOTES

Noncompliance.

Failure to file or swear to on assessment list does not render invalid an assessment

of taxes against land. *Evans v. F.L. Dumas Store, Inc.*, 192 Ark. 571, 93 S.W.2d 307 (1936).

26-26-903. Owner to list property.

(a) Every person of full age and sound mind shall list the real property of which he or she is the owner, situated in the county in which he or she resides, and the personal property of which he or she is the owner.

(b) The county assessor may relieve the person of this requirement by listing the current year's assessment of real property from a previous property list or from a changed list based on a reassessment of the value of the real property of the owner.

History. Acts 1883, No. 114, § 13, p. 199; C. & M. Dig., § 9890; Pope's Dig., § 13652; A.S.A. 1947, § 84-420; Acts 1991, No. 291, § 4.

A.C.R.C. Notes. Pursuant to Arkansas Constitution, Amendments 57 and 71, and § 26-3-302, intangible personal property and "items of household furniture and furnishings, clothing, appliances, and other personal property used within the home, if not held for sale, rental, or other commercial or professional use", are exempt from ad valorem taxes. Additional

ad valorem tax exemptions for public property, churches, cemeteries, schools, libraries, charities, and textile mills are found in Arkansas Constitution, Article 16, § 5(b), and Arkansas Constitution, Amendment 12. See also § 26-3-301 et seq.

Cross References. Error in ownership of property does not affect validity of assessment, § 26-34-102.

Penalty for disposition of property to avoid assessment, § 26-2-107.

CASE NOTES

ANALYSIS

Mineral Rights.
Residence.

Mineral Rights.

Under this section, mineral rights severed from the fee should be declared even though taxpayer regards them as of no value. *Stout Lumber Co. v. Parker*, 197 Ark. 65, 122 S.W.2d 180 (1938).

Residence.

As used in this section, residence means the place of actual abode, and not an established domicile or home which one expects to return to and occupy at some future time. *Smith v. Union County*, 178 Ark. 540, 11 S.W.2d 455 (1928).

Personal property of an attorney was

properly taxed in county wherein he maintained an office for practice of his profession and actually lived and spent most of his time, instead of county where he maintained a closed and unrented home and office though much of his property remained there. *Smith v. Union County*, 178 Ark. 540, 11 S.W.2d 455 (1928) (decision prior to 1929 amendment of § 26-26-1102).

Where farm extended in part of three counties without separating fences and cattle ranged freely from one county to another, situs of livestock for taxing purposes was the residence of the owner. *Magness v. Moss*, 203 Ark. 684, 158 S.W.2d 262 (1942).

Cited: *Baldwin v. Rushing*, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-26-904. Listing by representatives.

The property of every ward shall be listed by his or her guardian; of every minor, idiot, or lunatic, having no other guardian, by his or her father, if living, and if not, by his or her mother, if living; and if neither father nor mother is living, by the person having the property in charge; of every wife, by her husband, if of sound mind; if not, by herself, if she is of sound mind; of every person for whose benefit property is held in trust, by the trustee; of every estate of a deceased person, by the executor or administrator; of corporations whose assets are in the hands of receivers, by the receiver; of every company, firm, body politic, or corporate, by the president or principal accounting officer, partner, or agent thereof.

History. Acts 1883, No. 114, § 16, p. 199; C. & M. Dig., § 9893; Pope's Dig., § 13656; A.S.A. 1947, § 84-421.

CASE NOTES**Instructions.**

Refusal of requested instructions in eminent domain proceedings that the value placed on land by owner for tax purposes could be considered as evidence

of its value was not error where record did not show who placed value on the land. Arkansas State Hwy. Comm'n v. McMillan Estate, 247 Ark. 421, 445 S.W.2d 717 (1969).

26-26-905. Persons holding property.

Property held under a lease for a term exceeding ten (10) years belonging to the state or to any religious, scientific, or benevolent society or institution, whether incorporated or unincorporated, and school, seminary, saline, or other lands shall be considered, for all purposes of taxation, as the personal property of the person holding them and shall be listed as such by the person or his or her agent, as in other cases.

History. Acts 1883, No. 114, § 18, p. 199; C. & M. Dig., § 9895; Pope's Dig., § 13659; A.S.A. 1947, § 84-434.

26-26-906. Pawnbrokers.

Every person or company engaged in the business of receiving property in pledge or as security for money or other things advanced to the pawnor or pledger shall annually, at the time prescribed by this chapter for the assessment of personal property, return, under oath, all property pledged to and held by him or her as a pawnbroker to the county assessor of the proper county. The county assessor shall list and assess it to the pawnbroker at its fair cash value.

History. Acts 1883, No. 114, § 40, p. 199; C. & M. Dig., § 9955; Pope's Dig., § 13736; A.S.A. 1947, § 84-422.

26-26-907. Lands sold for taxes.

All lands and town lots sold for the payment of taxes shall be assessed in the name of the purchaser.

History. Acts 1883, No. 114, § 24, p. 199; C. & M. Dig., § 9909; Pope's Dig., § 13670; A.S.A. 1947, § 84-435.

26-26-908. Property converted into nontaxable securities.

(a) If any person shall have converted moneys, credits, or other personal property in the year preceding January 1 of the year in which he or she is required to assess his or her property into bonds or other securities of the United States or this state not taxed, and shall hold or control the bonds or securities when he or she is required to list his or her property, he or she shall list the monthly average value of the moneys, credits, or other property held or controlled by him or her.

(b) Any indebtedness of the persons represented by him or her, created by investment in the bonds or other securities, shall not be deducted from the amount of credits in making up his or her list for taxation.

History. Acts 1883, No. 114, § 14, p. 199; 1887, No. 92, § 3, p. 143; C. & M. Dig., § 9891; Pope's Dig., § 13654; A.S.A. 1947, § 84-423.

A.C.R.C. Notes. Pursuant to Arkansas Constitution, Amendment 57, and § 26-3-302, intangible personal property is exempt from ad valorem taxes.

26-26-909. Credits and stocks which need not be listed.

(a) No person shall be required to list a greater portion of any credits than he or she believes will be acquired or can be collected, nor any greater portion of any obligation given to secure the payment of rent than the amount of rent that shall have accrued on the lease and shall remain due and unpaid at the time of listing.

(b) No person shall be required to include in his or her statement, as a part of the personal property, moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, which he or she is required to list, any share or portion of the capital stock or property of any company or corporation which is required to list or return its capital and property for taxation in this state.

History. Acts 1883, No. 114, § 15, p. 199; C. & M. Dig., § 9892; Pope's Dig., § 13655; A.S.A. 1947, § 84-424.

Constitution, Amendment 57, and § 26-3-302, intangible personal property is exempt from ad valorem taxes.

A.C.R.C. Notes. Pursuant to Arkansas

CASE NOTES

ANALYSIS

Constitutionality.

Purpose.

Rents.

Stocks.

Constitutionality.

This section is not unconstitutional as creating an exemption not authorized by the Arkansas Constitution. *Dallas County v. Home Fire Ins. Co.*, 97 Ark. 254, 133 S.W. 1113 (1911).

Purpose.

Purpose of this section is to prevent double taxation. *Dallas County v. Home Fire Ins. Co.*, 97 Ark. 254, 133 S.W. 1113 (1911).

Rents.

Notes under contract in the form of a lease with option to purchase are rental notes and not taxable until maturity. *McConnell v. Sebastian County*, 144 Ark. 394, 222 S.W. 707 (1920).

Stocks.

An owner of stock in a domestic insurance company is not required to list such stock for taxation. *Dallas County v. Banks*, 87 Ark. 484, 113 S.W. 37 (1908).

Corporate stock purchased by another corporation is not taxable in the hands of the purchasing corporation, but the capital stock of a corporation, although invested in another corporation, is taxable. *Dallas County v. Home Fire Ins. Co.*, 97 Ark. 254, 133 S.W. 1113 (1911).

Corporations, in returning capital stock for taxation, cannot deduct investments of surplus in shares of stock of other corporation. *State ex rel. Attorney Gen. v. Ft. Smith Lumber Co.*, 131 Ark. 40, 198 S.W. 702 (1917).

Cited: *First Nat'l Bank v. Board of Equalization*, 92 Ark. 335, 122 S.W. 988 (1909); *State ex rel. Davis v. Bodcaw Lumber Co.*, 128 Ark. 505, 194 S.W. 692 (1917); *Pulaski County Bd. of Equalization v. American Republic Life Ins. Co.*, 233 Ark. 124, 342 S.W.2d 660 (1961).

26-26-910. Valuations in listings not conclusive.

(a)(1) The valuations as set out in any assessment list required under the provisions of this subchapter to be delivered to the county assessor by the property owner shall not be held to be conclusive as to the value of the property so listed, and the county assessor may make such assessment of the property as he or she may deem just and equitable.

(2)(A) The county assessor, in each instance where he or she raises the valuation of any property which has been listed with him or her as by law required, shall deliver to the property owner or his or her agent a duplicate copy of the adjusted assessment list, or he or she shall notify the property owner or his or her agent by first class mail, which notice shall state separately the total valuation of real and personal property as listed by the property owner and as fixed by the county assessor, and shall advise that the owner may, by petition or letter, apply to the county equalization board for the adjustment of the assessment as fixed by the county assessor.

(B) All applications shall be made to the county equalization board on or before the third Monday in August.

(b)(1) For the purpose of enabling the county assessor to determine just and equitable values of property, he or she is authorized, and it shall be his or her duty, to enter upon and make such personal inspection thereof as he or she shall deem necessary.

(2) Any person shall, when called upon by the county assessor, be required to answer upon oath and furnish proof demanded as to purchases, sales, transfers, improvements, accounts, notes, stocks, bonds, bank notes, bank deposits, invoices, insurance carried, or any and all other information requested and pertaining to the location, amount, kind, and value of his or her own property or that of another person.

History. Acts 1929, No. 172, § 12; Pope's Dig., § 13663; A.S.A. 1947, § 84-437.

A.C.R.C. Notes. Pursuant to Arkansas Constitution, Amendments 57 and 71, and § 26-3-302, intangible personal property and "items of household furniture and furnishings, clothing, appliances, and other personal property used within the home, if not held for sale, rental, or other

commercial or professional use", are exempt from ad valorem taxes. Additional ad valorem tax exemptions for public property, churches, cemeteries, schools, libraries, charities, and textile mills are found in Arkansas Constitution, Article 16, § 5(b), and Arkansas Constitution, Amendment 12. See also § 26-3-301 et seq.

CASE NOTES

ANALYSIS

Adjustment of Assessments.
Notice Requirements.
Valuation of Property.

Adjustment of Assessments.

Where taxpayer did not voluntarily assess his property as permitted by § 26-26-501 and where there were major increases in the assessment valuation of the property, the taxpayer, under due process requirements, had the right to appear and be heard through the processes provided by this section before the increased assessments became irrevocably fixed. *McMahan v. Hargett*, 252 Ark. 239, 478 S.W.2d 43 (1972).

An equalization board had no authority on December 10th to reduce or raise anybody's assessment for § 26-27-311 very definitely provides that the board cannot exercise such a function after the third Monday in November. *Jones v. Crouch*, 231 Ark. 720, 332 S.W.2d 238 (1960).

Every landowner is given the opportunity under this section to protest when his land is assessed for general taxation; a second opportunity need not be given for them to protest valuations for suburban improvement districts pursuant to § 14-92-238. *Harrill v. Board of Comm'rs*, 282 Ark. 348, 668 S.W.2d 538 (1984).

Notice Requirements.

Under this section and the due process of law requirement of the Arkansas Constitution, a taxpayer must be given notice, both of the raised assessment and of his right to a review thereof by the equalization board. *Prather v. Martin*, 257 Ark. 576, 519 S.W.2d 72 (1975).

Where notice was prepared by county clerk but was not mailed or otherwise communicated to taxpayer, the reassessment was invalid, since the requirement of notice was not obviated by the provision of § 26-27-318, which permits a property owner to appeal to the county court without first having exhausted his remedy before the equalization board in cases where he shall have had no opportunity to appear before the board. *Prather v. Martin*, 257 Ark. 576, 519 S.W.2d 72 (1975).

Although the requirements of due process and this section require that a property owner be notified of a raised assessment and of his right to a review thereof by the equalization board, where evidence reflected that notice was mailed, the reassessment was valid although there was no proof that the notice actually was received. *Prather v. Martin*, 257 Ark. 576, 519 S.W.2d 72 (1975).

Valuation of Property.

Refusal of requested instructions in eminent domain proceedings that the

value placed on land by owner for tax purposes could be considered as evidence of its value was not error where record did not show who placed value on the land. *Arkansas State Hwy. Comm'n v. McMillan*

Estate, 247 Ark. 421, 445 S.W.2d 717 (1969).

Cited: *Beard v. Wilcockson*, 184 Ark. 349, 42 S.W.2d 557 (1931).

26-26-911. Inquiries to makers of lists.

(a) The Arkansas Public Service Commission, the county assessor, or any one of them who may be required under the law to make assessment rolls shall, in addition to their duties as required by law, specifically inquire of the maker of each list the following:

- (1) The number, kind, and value of each automobile he or she owns;
- (2) The cash or funds on hand, and money on time deposit or otherwise in any depository, in or out of the state;
- (3) The taxable securities of every kind and their value, in or out of the state, he or she may own;
- (4) What stock, bonds, or mortgages owned and their value, in or out of the state;
- (5) What leases or mineral deeds are owned and the value of them that are contemplated in §§ 26-26-1109 and 26-26-1110;
- (6) What timber, deeds, or contracts contemplated by § 26-3-205 he or she owns and the value of them; and
- (7) Any other property of any kind whatsoever that has a value about which questions have not been asked.

(b) The taxpayer shall then be required to assess the properties disclosed by investigation.

History. Acts 1929, No. 111, § 2; Pope's Dig., § 13626; A.S.A. 1947, § 84-425.

A.C.R.C. Notes. The authority of the Arkansas Public Service Commission with respect to the equalization and assessment of property and the administration of tax laws, except with respect to public utilities and carriers, was transferred to the Assessment Coordination Department by Acts 1997, No. 436. See §§ 25-28-102 and 25-28-103.

Pursuant to Arkansas Constitution, Amendments 57 and 71, and § 26-3-302,

intangible personal property and "items of household furniture and furnishings, clothing, appliances, and other personal property used within the home, if not held for sale, rental, or other commercial or professional use", are exempt from ad valorem taxes. Additional ad valorem tax exemptions for public property, churches, cemeteries, schools, libraries, charities, and textile mills are found in Arkansas Constitution, Article 16, § 5(b), and Arkansas Constitution, Amendment 12. See also § 26-3-301 et seq.

RESEARCH REFERENCES

Ark. L. Rev. Acts Affecting Property Taxation, 5 Ark. L. Rev. 365.

26-26-912. [Repealed.]

Publisher's Notes. This section, concerning house-to-house canvass, was repealed by Acts 2011, No. 175, § 5. The

section was derived from Acts 1929, No. 172, § 13; Pope's Dig., § 13664; A.S.A. 1947, § 84-442.

26-26-913. Special list of omitted property.

Whenever the county assessor shall discover that any property has been omitted for any cause from the assessment roll, if it is before the county collector closes his or her books for the collection of taxes for the year in which the property was due to have been assessed, it shall be his or her duty, immediately upon making that discovery, to make a special list or assessment thereof and file it with the county clerk, who shall place it upon the tax books and extend the taxes and penalty thereon for the year. The county collector shall proceed to collect these taxes and penalty as is required by law.

History. Acts 1929, No. 172, § 15; Pope's Dig., § 13666; Acts 1977, No. 202, § 1; A.S.A. 1947, § 84-444.

Publisher's Notes. Acts 1977, No. 202, § 2, provided that it was the purpose and intent of the act to relieve the respective

counties of any responsibility or authority to pay any person a "finder's fee" for discovering, or purporting to have discovered, and reporting any taxable property in the county which is not listed on the assessment rolls as required by law.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey of Arkansas Law, Public Law, 1 U. Ark. Little Rock L.J. 230.

CASE NOTES**ANALYSIS**

Purpose.
Assessment of Property.
Tax Representatives.
Valuation of Property.

Purpose.

The purpose of this section was held to be to permit an individual taxpayer to report unassessed property and collect an award, and the section assumes that there will be no disagreement as to the legality of the assessment, since there is no provision to resolve such disagreement. *Rottinghaus v. Holder*, 261 Ark. 634, 550 S.W.2d 462 (1977) (decision prior to 1977 amendment).

Assessment of Property.

Where an assessor, before the collector closes his books, discovers land purchased from the state has not been assessed, it is his duty to make and file an assessment regardless of whether the land was certified to the county clerk. *Tedford v. Vaulx*, 183 Ark. 240, 35 S.W.2d 346 (1931).

Assessment for year in which former owner has redeemed the land from the

state was authorized after time for regular assessment had passed. *Vandergrift v. Lowery*, 195 Ark. 257, 111 S.W.2d 510 (1937).

Though equalization board had finally adjourned when assessment of taxpayer's mineral rights were made, taxpayer was not without right of redress, since he had the right, by certiorari from the circuit court directed to the county clerk, to have the record brought up for review and correction. *Stout Lumber Co. v. Parker*, 197 Ark. 65, 122 S.W.2d 180 (1938).

This section does not authorize additional assessments of the taxpayer's personalty after the collector's books for the tax years involved have been closed. *Jensen v. Dierks Lumber & Coal Co.*, 209 Ark. 262, 190 S.W.2d 5 (1945).

Tax Representatives.

Cooperative employment by school districts of tax representative, whose duties include discovery of new construction and other property not listed for taxation, appraisal of such property, and submission of that information to appropriate district held not duplication of duties of county

assessor. *Burnett v. Nix*, 244 Ark. 235, 424 S.W.2d 537 (1968).

Valuation of Property.

This section gives no guideline or formula by which the taxability or value of reported property can be judged, and the setting of such value requires indepen-

dent judgment, which cannot be determined in advance by the circuit court on a petition for mandamus. *Bunting v. Tedford*, 261 Ark. 638, 550 S.W.2d 459 (1977).

Cited: *Burgess v. Four States Mem. Hosp.*, 250 Ark. 485, 465 S.W.2d 693 (1971).

26-26-914. Unavoidable failure to list property.

(a) If any person required to list property for taxation shall have been prevented by sickness or absence from giving to the county assessor the list of property as prescribed by this subchapter, the person, or his or her agent having charge of the property, may, at any time before the making out of the tax books by the county clerk, make out and deliver to the county assessor of the county a statement of the same as required by this subchapter. The county assessor shall in such case make an entry in the returns of the proper city, town, ward, or school district and correct the items in the return made by him or her, as the case may require.

(b) No such statement shall be received by the county assessor from any person who shall have refused or neglected to make oath to his or her statement when required by the county assessor under the provisions of this subchapter, nor from any person unless he or she shall have first made and filed with the county clerk an affidavit that the person required to list the same was absent from his or her county without design to avoid listing his or her property or was prevented by sickness from giving to the county assessor the required statement when called upon for that purpose.

History. Acts 1883, No. 114, § 97, p. 199; C. & M. Dig., § 10021; Pope's Dig., § 13768; A.S.A. 1947, § 84-441.

SUBCHAPTER 10 — EXEMPT PROPERTY

SECTION.

26-26-1001. List of exempt real property.

26-26-1002. Separate list of omitted exempt realty.

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

Acts 1915, No. 197, § 2: approved Mar. 20, 1915. Emergency declared.

26-26-1001. List of exempt real property.

The county assessor, at the time of making the assessment of real property subject to taxation, shall enter into a separate list pertinent

descriptions of all burying grounds, public school houses, houses used exclusively for public worship, and institutions of purely public charity, and public buildings and property used exclusively for any public purpose, with the lot or tract of land on which the house or institution or public building is situated, and which are by law exempt from taxation. If the property is held and used for other public purposes, he or she shall state by whom or how it is held.

History. Acts 1883, No. 114, § 72, p. 199; C. & M. Dig., § 9935; Pope's Dig., § 13700; A.S.A. 1947, § 84-459; Acts 1997, No. 336, § 1.

Cross References. Exemption of real property to be noted on assessment roll, § 26-26-718.

Exemptions from taxation, § 26-3-301 et seq.

Intangible personal property, Ark. Const. Amend. 57.

Personal property taxes, Ark. Const. Amend. 71.

Providing for exemption of value of residence of person 65 or over, Ark. Const., Art. 16, § 16.

Property subject to taxation and exemptions, § 26-3-201 et seq.

Property taxed according to value — Procedures for valuation — Tax exemptions, Ark. Const., Art. 16, § 5.

CASE NOTES

Improvement Districts.

Value of exempt property as determined by county assessor should be used in determining valuation of property in improvement district on petition for formation of district. *Improvement Dist. v. St. Louis S. R. Co.*, 99 Ark. 508, 139 S.W. 308 (1911); *Fry v. Poe*, 175 Ark. 375, 1 S.W.2d 29 (1927).

Value of public buildings as shown by last county assessment should be included in determining total assessed value of

improvement district for purpose of determining whether cost of improvement exceeds specified value. *Brown v. Board of Comm'rs*, 165 Ark. 585, 265 S.W. 81 (1924).

Cited: *Lenon v. Brodie*, 81 Ark. 208, 98 S.W. 979 (1906); *Improvement Dist. v. St. Louis S. R. Co.*, 99 Ark. 508, 139 S.W. 308 (1911); *Malvern v. Nunn*, 127 Ark. 418, 192 S.W. 909 (1917); *Pulaski County v. Jacuzzi Bros.*, 317 Ark. 10, 875 S.W.2d 496 (1994).

26-26-1002. Separate list of omitted exempt realty.

(a) Whenever the county assessor of any county has, during any year at the time of making the assessment of real property subject to taxation, failed to enter in a separate list pertinent descriptions of all burying grounds, public school houses, houses used exclusively for public worship, institutions of purely public charity, public buildings, and property used exclusively for any public purpose, libraries, and grounds used exclusively for school purposes, and property which by the Arkansas Constitution is exempted from taxation, the lots or tracts of land on which the institution or public building is situated, and which by law are exempted from taxation, and the value thereof, the county assessor of the county, or his or her successor in office, is authorized and empowered, at any time and during any year thereafter, upon discovery of the omission to make out separate lists, giving their description and the value of all the described property which has been omitted from the list.

(b)(1) The list of the property, together with the valuation thereof, shall be filed with the county clerk of the county and by him or her entered upon the proper assessment book of the county.

(2) When the list of the omitted property has been filed by the county assessor, or his or her successor in office, with the county clerk in the county where the property is situated, it shall have the same force and validity as if entered, made, and filed at the proper time as prescribed by law.

History. Acts 1915, No. 197, § 1, p. 796; C. & M. Dig., § 9936; Pope's Dig., § 13701; A.S.A. 1947, § 84-460.

CASE NOTES

Improvement Districts.

City council properly took into account tax exempt school and church property in determining whether two-thirds in value of property owners of improvement district had signed petitions for forming dis-

trict where it had before it last assessment of real property, together with list of tax exempt property, even though separate list was filed subsequently to assessment. *Brown v. Headlee*, 224 Ark. 156, 272 S.W.2d 56 (1954).

SUBCHAPTER 11 — ASSESSMENT OF PROPERTY GENERALLY

SECTION.

- 26-26-1101. Time to assess realty.
- 26-26-1102. Place of assessment.
- 26-26-1103. Reports of total assessments.
- 26-26-1104. Failure to list intangible personalty.
- 26-26-1105. Report of manufactured home and mobile home purchases.
- 26-26-1106. [Repealed.]
- 26-26-1107. Change in or damage to property.
- 26-26-1108. Agricultural lands annexed by city or town.
- 26-26-1109. Timber rights.
- 26-26-1110. Mineral rights.
- 26-26-1111. Mineral and surface estates owned by same person.
- 26-26-1112. Separate records for severed mineral interests.
- 26-26-1113. Property used for other than church purposes.

SECTION.

- 26-26-1114. Assessment of personal property taxes by mail or by telephone.
- 26-26-1115. Apportionment of realty taxes.
- 26-26-1116. [Repealed.]
- 26-26-1117. [Repealed.]
- 26-26-1118. Limitation on increase of property's assessed value.
- 26-26-1119. Prohibited conduct — Penalties — Time limitation.
- 26-26-1120. Disabled persons.
- 26-26-1121. Determination of millage rollback.
- 26-26-1122. Definitions.
- 26-26-1123. Sale of real property.
- 26-26-1124. Property tax relief for persons disabled or more than sixty-five years of age.

Cross References. Assessment of residential property and agricultural, pasture, timber, residential, and commercial land, Ark. Const., Art. 16, § 15.

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

Acts 1905, No. 303, § 5: effective on passage.

Acts 1919, No. 147, § 18: approved Mar. 1, 1919. Emergency clause provided: "That Act 234 of the Acts of 1917 and Act 124 of the Acts of 1913, and all other laws

in conflict herewith, are hereby repealed, and this Act, being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this Act shall take effect and be in force from and after its passage."

Acts 1929, No. 172, § 4: approved Mar. 22, 1929. Emergency clause provided: "It is ascertained and hereby declared that the present system of assessing property for taxation is defective, unfair, unjust and inequitable; that the changes herein contemplated are necessary in order to bring about a more equitable distribution of the costs of government, so that the immediate operation of the Act is essential for the preservation of the public peace, health and safety, and an emergency is therefore declared, and this Act shall take effect and be in force from and after its passage."

Acts 1929, No. 221, § 2: effective on passage.

Acts 1943, No. 278, § 5: effective on passage.

Acts 1957, No. 385, § 3: approved Mar. 27, 1957. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that the failure to assess all real property annually in each county of the State has resulted and will continue to result in a great loss of revenues to the several taxing units in the State of Arkansas, that on account of such loss of revenues the cities, counties and school districts in the State of Arkansas are deprived of funds and are thereby to such extent handicapped in supplying their respective services to the citizens of this State; and that only by the passage of this Act and giving immediate effect to its provisions can the Assessors prepare for proper annual assessments and thereby an immediate reduction be made in such loss of revenues. An emergency, therefore, is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage."

Acts 1959, No. 246, § 5: Mar. 25, 1959. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that the laws of this State regarding the time for assessment of real and personal property and the equalization thereof have resulted and will con-

tinue to result in a great loss of revenues to the several taxing units in the State of Arkansas, that on account of such loss of revenues the cities, counties and school districts in the State of Arkansas are deprived of funds and are thereby to such extent handicapped in supplying their respective services to the citizens of this State, and that only by the immediate passage of this Act may such situation be corrected. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1963, No. 545, § 4: approved Mar. 3, 1963. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that a substantial amount of agricultural lands are and will be annexed into various cities and towns in the State. That same will be taxed in many instances as subdivision or other real estate development land, imposing an inequitable and an undue tax burden upon farmers farming agricultural lands within such annexed areas, and this Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage."

Acts 1969, No. 269, § 4: Mar. 18, 1969. Emergency clause provided: "It is hereby determined by the General Assembly that prospective manufacturing and processing industries and commercial warehouses are confused as to ad valorem taxation of personal property in transit through Arkansas, and that because of this confusion the decision to locate industries therein may be adversely influenced to the extent that the State may lose valuable new industries. Therefore, an emergency is hereby declared to exist, and this Act, being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 461, § 2: Mar. 18, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that in recent years there has been an enormous increase in the sale of mobile homes in this State; that such increase in

mobile home sales has created an undue burden on the tax assessors of this State; and that immediate passage of this Act is necessary to encourage, promote and assist in the efficient enforcement of the property assessment procedures as now provided by law. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 203, § 3: Feb. 21, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is obviously impossible for the county assessor in each county to discover all taxable intangible personal property in the county for inclusion on the assessment rolls; that to impose this impossible burden on the assessor without exempting him from personal or official liability for failure to discover all of such property is totally unfair and places a severe hardship on the assessors; that this Act is designed to exempt the assessors from any liability, personal or official, for failure to find any and all intangible property in the county unless the failure to discover such property and include it on the tax rolls was a result of collusion between the assessor and the property owner for the purpose of evading taxes, and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 961, § 3: Apr. 15, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Supreme Court has ruled that maintaining separate tax assessment records for severed mineral interests and surface interests contravenes present law; that many county assessors do maintain separate records for severed mineral interests; that it is an unreasonable burden to require the records of severed mineral interests to be subjoined to the tax records of the surface estates; and that this Act is immediately necessary to allow the maintenance of such separate records. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public

peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 1040, § 7: Apr. 14, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that many churches have engaged in the practice of investing in real and personal property, or have received donations of commercial or rental property which is not now assessed for ad valorem tax purposes and are not paying tax thereon as required by law, thereby depriving the local taxing units of thousands of dollars of much needed revenues; that under the Arkansas Constitution of 1874, Article 16, Sections 5 and 6, such property is not exempt from the provisions of the ad valorem property tax; that in many instances such churches do not report for Arkansas Income Tax purposes income derived from investments or profits derived from rental income or other commercial or business activities and do not pay taxes thereon; that this reduces the amount of revenues available for funding of State services; and that only by the immediate passage of this Act can this situation be remedied. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1261, § 4: January 1, 1994.

Acts 1999, No. 974, § 5: Mar. 31, 1999. Emergency clause provided: "It is found and determined by the General Assembly that devastating tornadoes recently occurred in several counties of the state; several of the affected counties have been declared disaster areas; and that this act provides assistance to persons whose property was damaged in the tornadoes. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Identical Acts 2000 (2d Ex. Sess.), Nos. 1 and 2, § 11. December 15, 2000. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that Amendment 79 to the Arkansas Constitution requires the General Assembly to provide for a property tax credit of not less than \$300 for each homestead; that providing such a property tax credit results in a significant reduction in revenues for funding county services and public schools; that without an alternative source of funding counties and public schools cannot operate effectively; that an increase in the state sales and use tax provides a source of funding for counties and public schools; that this act will accomplish the purposes of Amendment 79 in providing a property tax credit and source of funding. It is necessary that this act become effective immediately in order to facilitate the administration of the property tax credit and to generate sufficient revenues to fully fund the credit. Therefore, an emergency is declared to exist and Sections 1, 2, 3, 4, 5, 6, 8 and 9 of this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1544, § 6: Apr. 12, 2001. Emergency clause provided: "It is found and determined by the General Assembly that in order to efficiently reimburse the counties for the homestead property tax credit, county assessors are required to recertify to the Chief Fiscal Officer the amount of real property reduction on or before June 30 of the year 2001 and every year thereafter. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the

veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1598, § 2: Apr. 13, 2001. Emergency clause provided: "It is found and determined by the General Assembly that Amendment 79 to the Constitution of Arkansas went into effect on January 1, 2001 and confusion has arisen as to claiming the property tax credit. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2005, No. 1268, § 3: Mar. 29, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there are many terms used in Amendment 79 of the Arkansas Constitution that are not defined; that Amendment 79 gives the General Assembly the authority to implement the provisions of that amendment; that for uniformity and clarity certain terms should be defined; and that this act accomplishes this purpose. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2005, No. 2284, § 2: effective on and after January 1, 2006.

Acts 2009, No. 151, § 3: Jan. 1, 2008. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that not all counties are following the dictates of Arkansas Constitution, Amendment 79; that some counties are not allowing persons that meet the property tax relief requirements under Arkansas Constitution, Amendment 79, to be assessed a later assessed

value if that assessment is lower; that this results in taxpayers not being treated equally across the state; that all counties should allow its taxpayers that qualify for the property tax relief to be assessed a later assessed value if that assessment is lower; and that all counties should follow the provisions of Arkansas Constitution,

Amendment 79. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on January 1, 2008.”

Acts 2009, No. 421, § 2: July 31, 2009: effective for the assessment year 2009 and thereafter.

RESEARCH REFERENCES

Am. Jur. 72 Am. Jur. 2d, State Tax., § 704 et seq.

C.J.S. 84 C.J.S., Tax., § 390 et seq.

26-26-1101. Time to assess realty.

Each year the county assessor shall, between the first Monday in January and July 1, appraise and assess all real property situated within the boundaries of the county.

History. Acts 1957, No. 385, § 1; 1959, No. 246, § 3; A.S.A. 1947, § 84-415.

CASE NOTES

ANALYSIS

Method of Assessment.
Tax Basis.
Timeliness.

Method of Assessment.

Assessment of real estate is accomplished by assessor without intervention of property owner. *Evans v. F.L. Dumas Store, Inc.*, 192 Ark. 571, 93 S.W.2d 307 (1936) (decision under prior law).

An assessor has full authority to assess property at whatever figure, based on his information or investigation, he deems to be right and proper; it is the duty of the assessor to make the assessment and notify the property owner, after which the owner can file his petition with the county equalization board. *Jones v. Crouch*, 231 Ark. 720, 332 S.W.2d 238 (1960).

Tax Basis.

Quorum court held without authority to levy millages on any basis other than assessment of assessor, as equalized and adjusted by equalization board. *Layne v. Strode*, 229 Ark. 513, 317 S.W.2d 6 (1958) (decision under prior law).

Timeliness.

The fact that a notice of property revaluation was dated July 11, 1993, is not conclusive proof that a 1993 assessment was not made before July 1, 1993. *City of N. Little Rock v. Pulaski County*, 332 Ark. 578, 968 S.W.2d 582 (1998).

Cited: *Dierks Forests, Inc. v. Shell*, 240 Ark. 966, 403 S.W.2d 83 (1966); *Burgess v. Four States Mem. Hosp.*, 250 Ark. 485, 465 S.W.2d 693 (1971); *McMahen v. Hargett*, 252 Ark. 239, 478 S.W.2d 43 (1972).

26-26-1102. Place of assessment.

(a) All real estate and tangible personal property shall be assessed for taxation in the taxing district in which the property is located and kept for use.

(b)(1)(A) Tangible personal property in transit for a destination within this state shall be assessed only in the taxing district of its destination.

(B) Tangible personal property in transit through this state, including raw materials from within or outside this state used in the manufacturing process and tangible personal property manufactured, processed, or refined in this state and stored for shipment outside the state, shall, for purposes of ad valorem taxation, acquire no situs in this state and shall not be assessed for taxation in this state.

(C) The owner of tangible personal property in transit through this state and of tangible personal property in transit for a destination within this state may be required, by the appropriate county assessor, to submit documentary proof of the in-transit character and the destination of the property.

(2) As used in this section, "tangible personal property in transit through this state" means tangible personal property:

(A) Which is moving in interstate commerce through or over the territory of this state;

(B) Which is consigned to or stored in or on a warehouse, dock, or wharf, public or private, within this state for storage in transit to a destination outside this state, whether the destination is specified when transportation begins or afterward, except where the consignment or storage is for purposes other than those incidental to transportation of the property; or

(C) Which is manufactured, processed, or refined within this state and which is in transit and consigned to, or stored in or on, a warehouse, dock, or wharf, public or private, within this state for shipment to a destination outside this state.

History. Acts 1883, No. 114, § 17, p. 199; C. & M. Dig., § 9894; Acts 1929, No. 172, § 6; Pope's Dig., § 13657; Acts 1969, No. 269, § 1; A.S.A. 1947, § 84-417; Acts 1997, No. 1294, § 1.

CASE NOTES

ANALYSIS

Legislative Intent.

Raw Materials.

Recovery of Taxes.

Legislative Intent.

This section is ambiguous and effect must be given to the legislative intent. The General Assembly did not intend to tax the raw materials used to produce products to be shipped outside this state. *Omega Tube & Conduit Corp. v. Maples*, 312 Ark. 489, 850 S.W.2d 317 (1993).

Raw Materials.

According to this section, raw materials used to produce products to be shipped out of state do not attain a tax situs in Arkansas. *Omega Tube & Conduit Corp. v. Maples*, 312 Ark. 489, 850 S.W.2d 317 (1993).

Recovery of Taxes.

A taxpayer may not recover taxes it has paid voluntarily. *Omega Tube & Conduit Corp. v. Maples*, 312 Ark. 489, 850 S.W.2d 317 (1993).

Cited: *Hutton v. King*, 134 Ark. 463,

205 S.W. 296 (1918); Arkansas Tax Comm'n v. Ashby, 217 Ark. 759, 233 S.W.2d 361 (1950).

26-26-1103. Reports of total assessments.

(a) The county assessor shall, on or before August 1 of each year, deliver to the clerk of the county equalization board his or her completed assessment tax record, showing the total assessment of the county as made by the county assessor. He or she shall also furnish such other information as the county equalization board may request of the county assessor.

(b) The county assessor shall, on or before the third Monday in August of each year, report to the Arkansas Public Service Commission, by total of items and value, the total assessment of the county as made by the county assessor and the commission and in the manner as directed by the commission, as to kind, character, number, and value of all tangible property assessed for taxation in the county and such other information as the commission may demand of the county assessor.

History. Acts 1919, No. 147, § 14; C. & M. Dig., § 9920; Acts 1929, No. 172, § 19; Pope's Dig., § 13687; Acts 1959, No. 246, § 4; A.S.A. 1947, §§ 84-463, 84-463.1.

A.C.R.C. Notes. The authority of the Arkansas Public Service Commission with respect to the equalization and assessment of property and the administration

of tax laws, except with respect to public utilities and carriers, was transferred to the Assessment Coordination Department by Acts 1997, No. 436. See §§ 25-28-102 and 25-28-103.

Cross References. Reports in counties adopting unit tax ledger system to be by total and not by items, § 26-28-205.

CASE NOTES

Cited: Burgess v. Four States Mem. Hosp., 250 Ark. 485, 465 S.W.2d 693 (1971).

26-26-1104. Failure to list intangible personalty.

A county assessor in this state shall not be held liable, either personally or in his or her official capacity as county assessor, for failure to discover and include on the assessment rolls any taxable intangible personal property in the county unless the failure to discover or to include the intangible property on the assessment rolls was a result of, or pursuant to, collusion between the county assessor and the property owner for the purpose of evading taxes due on the property.

History. Acts 1977, No. 203, § 1; A.S.A. 1947, § 84-417.1.

A.C.R.C. Notes. Pursuant to Arkansas

Constitution, Amendment 57, and § 26-3-302, intangible personal property is exempt from ad valorem taxes.

CASE NOTES

Cited: Bunting v. Tedford, 261 Ark. 638, 550 S.W.2d 459 (1977).

26-26-1105. Report of manufactured home and mobile home purchases.

(a) A purchaser of a manufactured home or mobile home shall report the purchase of each new or used manufactured home or mobile home to the county assessor of the appropriate county where the manufactured home or mobile home will be located.

(b) The report shall include:

- (1) The name of the purchaser;
- (2) The purchaser's address;
- (3) The date on which the purchase was made; and
- (4) Other information as may be deemed necessary by the county assessor.

History. Acts 1975, No. 461, § 1; A.S.A. 1947, § 84-426.4; Acts 2005, No. 2228, § 2.

26-26-1106. [Repealed.]

A.C.R.C. Notes. This section was specifically repealed by Acts 2005, No. 2228, § 3. Acts 2005, No. 1994, § 167 would have amended § 26-26-1106(c) to change "misdemeanor" to "violation".

cerning mobile home decals, was repealed by Acts 2005, No. 2228, § 3. The section was derived from Acts 1973, No. 16, §§ 1-3; A.S.A. 1947, §§ 84-426.1 — 84-426.3.

Publisher's Notes. This section, con-

26-26-1107. Change in or damage to property.

(a) All lands that shall have been purchased from owners, the property of whom or which was by law exempt, all new improvements over the actual value of one hundred dollars (\$100), and all town or city lots as may have been platted, as the case may be, subsequent to January 1 of any year shall be subject to assessment and taxation for the year immediately following the purchase, improvement, or platting.

(b)(1)(A) In each year, all real estate or improvements on real estate which have been damaged by fire, flood, tornado, or other act of God, if the property is then on the assessment record at a value determined prior to the damage and if the damage occurred prior to the date the county assessor is required by law to deliver his or her report of assessment to the county clerk, then that property shall be revalued and assessed by the county assessor.

(B) Nothing in this subsection shall be construed as requiring a county assessor to seek to identify property which may have been damaged.

(2) An appeal shall lie from the action of the county assessor as in the case of other property in that year assessed.

History. Acts 1883, No. 114, § 67, p. 172, § 4; Pope's Dig., § 13685; Acts 1943, No. 278, § 4; A.S.A. 1947, § 84-436; Acts 1999, No. 974, § 1.

CASE NOTES

ANALYSIS

Constitutionality.
Improvements.
Purchases from State.
Redemption of Land.

Constitutionality.

This section, requiring assessment and taxation at the beginning of the year following the purchase, is an administrative directive that need not be construed as an exemption of property from taxation in violation of Ark. Const., Art. 16, § 6. *Taylor v. Finch*, 288 Ark. 50, 701 S.W.2d 377 (1986).

Improvements.

Former law on assessment of improvements. *State v. F. W. Burford Co.*, 203 Ark. 399, 156 S.W.2d 806 (1941).

Purchases from State.

Lands purchased from state become subject to taxation when deed is executed and do not remain free of tax until land commissioner certifies land to county clerk. *Tedford v. Vaulx*, 183 Ark. 240, 35 S.W.2d 346 (1931).

Redemption of Land.

Evidence insufficient to show that assessor had not performed his duty to assess land after redemption. *Slaton v. Pride*, 195 Ark. 1055, 115 S.W.2d 547 (1938) (decision prior to 1943 amendment).

Cited: *Arkansas Tax Comm'n v. Turley*, 185 Ark. 31, 45 S.W.2d 859 (1932).

26-26-1108. Agricultural lands annexed by city or town.

(a) All lands which may be annexed by any city or incorporated town which are being used for agricultural purposes shall be assessed as agricultural lands upon an acreage basis, regardless of the fact that any or all of the lands are embraced in a plat of a subdivision or other real estate development, and regardless of the fact that the lands may be zoned as commercial, industrial, or residential, and regardless of the fact that the lands may be adaptable to commercial, industrial, or residential uses.

(b) Agricultural purposes shall include lands which are presently used and have been used for a period of five (5) continuous years in a bona fide farming, pasture, or grove operation by the owner, lessee, or some person in his or her employ.

(c) Lands which have not been used for agricultural purposes prior to March 29, 1963, shall be prima facie subject to assessment on the same basis as assessed for the previous years, and any demand for a reassessment of such lands for agricultural purposes shall be subject to the scrutiny of the county assessor to the end that the lands shall be classified properly.

(d) When lands subject to this section cease to be used for agricultural purposes, the lands shall be assessed as other lands of the same character.

(e) For the purposes of this section, agricultural lands shall include dairy, livestock, poultry, and all forms of farm products and farm production.

History. Acts 1963, No. 545, §§ 1, 2; A.S.A. 1947, §§ 84-479, 84-480.

Cross References. Assessment of agriculture land, Ark. Const., Art. 16, § 15.

RESEARCH REFERENCES

Ark. L. Notes. Olson, Agricultural Zoning: A Remedy for Land Use Conflicts Between Poultry Production and Residential Development In Northwest Arkansas, 1997 Ark. L. Notes 119.

26-26-1109. Timber rights.

(a)(1) When the timber rights in any land shall, by conveyance or otherwise, be held by one (1) or more persons, firms, or corporations, and the fee simple in the land by one (1) or more other persons, firms, or corporations, it shall be the duty of the county assessor, when advised of the fact, either by personal notice or by recording of the deeds in the office of the recorder of the county, to assess the timber rights in the lands separate from the soil.

(2) In such a case, a sale of the timber rights for nonpayment of taxes shall not affect the title to the soil itself, nor shall a sale of the latter for nonpayment of taxes affect the title to the timber rights.

(b)(1) It shall be the duty of the county assessor to assess timber rights with a description of the land on the real estate tax books, and the assessment shall be marked "timber".

(2) Upon the nonpayment of taxes so assessed against the timber, it shall be advertised with a description of the land as "timber" giving the character or kind of the timber, in some newspaper as provided by law for nonpayment of taxes on land, and the timber shall be sold as provided by law for the sale of delinquent lands.

(c) When any timber rights assessed as set out in this section become forfeited on account of nonpayment of taxes, they shall, in all things, be certified to and redeemed in the same manner as is provided for the certification and redemption of real estate upon which taxes duly assessed have not been paid.

History. Acts 1897, No. 30, § 1, p. 38; 1905, No. 303, §§ 1, 2, p. 738; C. & M. Dig., §§ 9856, 9940, 9941; Acts 1929, No. 221, § 1; Pope's Dig., §§ 13600, 13724, 13725; A.S.A. 1947, §§ 84-203, 84-432, 84-433.

Cross References. Assessment of timber land, Ark. Const., Art. 16, § 15.

Tax on timber and range lands, § 26-61-101 et seq.

Timber rights as taxable property, § 26-3-205.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Annual Survey of Caselaw, Property Law, 25 U. Ark. Little Rock L. Rev. 1025.

CASE NOTES

ANALYSIS

Constitutionality.

Applicability.

Abandonment.

Separate Assessment.

Constitutionality.

This section is not unconstitutional as discriminating against corporations in favor of individuals. *State ex rel. Attorney Gen. v. Arkansas Fuel Oil Co.*, 179 Ark. 848, 18 S.W.2d 906 (1929); *Arkansas Fuel Oil Co. v. State*, 180 Ark. 765, 22 S.W.2d 556 (1929).

Applicability.

Standing timber, although the ownership thereof is severed from the ownership of the soil, is part of the land and as such, subject to assessment in a levee district. *Lewis v. Delinquent Lands*, 182 Ark. 838, 33 S.W.2d 379 (1930).

This section is intended to apply to the assessment of property for general taxes rather than to an assessment of benefits by an improvement district. *Long Prairie Levee Dist. v. Wall*, 227 Ark. 305, 298 S.W.2d 52 (1957).

Abandonment.

Failure of purported owner of timber to assess or pay taxes on timber for a period of approximately 40 years was evidence of abandonment of timber rights. *United States v. Wheeler*, 161 F. Supp. 193 (W.D. Ark. 1958).

Separate Assessment.

This section does not authorize separate assessment of standing timber and collection of taxes thereon except in cases where

"the timber rights in any land shall, by conveyance or otherwise, be held by one or more persons, firm or corporation and the fee simple in the land by one or more persons, firms or corporations." *Connell v. Pioneer Cooperage Co.*, 172 Ark. 1056, 291 S.W. 1005 (1927).

Where land and timber rights had been owned by one person, a purchaser of the land, apart from the timber, who voluntarily paid the taxes on both land and timber could not recover the proportionate amount of the taxes on the timber from the purchaser of the timber. *Connell v. Pioneer Cooperage Co.*, 172 Ark. 1056, 291 S.W. 1005 (1927).

When there has been a severance of timber rights by a deed duly recorded, such rights must be assessed separately and apart from the surface rights. *Huffman v. Henderson Co.*, 184 Ark. 278, 42 S.W.2d 221 (1931).

When timber rights have not been assessed separately from the surface rights, the assessment will be held to apply only to the surface rights, and a sale under this assessment will operate to convey title only to the surface rights. *Huffman v. Henderson Co.*, 184 Ark. 278, 42 S.W.2d 221 (1931).

In sum, this section provides that timber rights held by one person are to be assessed separately from the fee simple rights of another in the land, because the timber rights are separate from another's rights in the soil. *Bonds v. Carter*, 348 Ark. 591, 75 S.W.3d 192 (2002).

Cited: *Sorkin v. Myers*, 216 Ark. 908, 227 S.W.2d 958 (1950); *United States v. Wheeler*, 161 F. Supp. 193 (W.D. Ark. 1958).

26-26-1110. Mineral rights.

(a)(1) The county assessor shall assess all producing mineral interests in the county.

(2)(A) The county assessor shall assess the mineral interests in the land separate from the fee simple interest in the land when the:

(i) Mineral interests in the land are held by one (1) or more persons that are different from the person or persons holding the fee simple interest; and

(ii) County assessor is advised of the separate holdings by the recording of a deed in the county recorder's office.

(B) When subdivision (a)(2) of this section applies, a sale of the mineral interests for nonpayment of taxes shall not affect the title to the land itself, nor shall a sale of the land for nonpayment of taxes affect the title to the mineral interests.

(b) When any mineral rights assessed as set out in subsection (a) of this section become forfeited on account of nonpayment of taxes, they shall, in all things, be certified to and redeemed in the same manner as is provided for the certification and redemption of real estate upon which taxes duly assessed have not been paid.

(c)(1) Because of the difficulty of ascertaining the value of a nonproducing mineral right and in order to ensure equal and uniform taxation throughout the state, a nonproducing mineral right has zero (0) value for the purpose of property tax assessment and is included in the value of the fee simple interest assessed.

(2) If the fee simple in the land and the nonproducing mineral right that has zero (0) value as determined under subdivision (c)(1) of this section are owned by different persons, there is no property tax due on the mineral right.

(3) For a nonproducing mineral right that has zero (0) value as determined under subdivision (c)(1) of this section, the mineral right owner may agree to a voluntary property tax assessment of the mineral right and pay a property tax according to rules established by the Assessment Coordination Department with the assistance of the Arkansas Assessors Association.

(4) When a nonproducing mineral right begins producing minerals, the mineral right shall be assessed for tax purposes in accordance with rules established by the department.

(d)(1)(A) If the department determines that a county assessor has failed to assess mineral interests as required under this section, the department shall notify the county assessor by certified mail with copies to the:

- (i) County equalization board;
- (ii) County judge;
- (iii) County quorum court; and
- (iv) Reappraisal contractor, if applicable.

(B) In addition, the notice may provide that state reappraisal reimbursement funds to the county may be withheld pending the outcome of a hearing if a hearing is requested by the county assessor within thirty (30) days from the date of the notice.

(2)(A) The county assessor may waive the right to a hearing and within thirty (30) days from the date of the notice agree to complete corrective action as required by the department and return a signed and dated compliance verification form to the department.

(B) Upon receipt of the signed and dated compliance verification form, the department shall release any withheld state reappraisal reimbursement funds and resume regular payments.

(3) Termination of state reappraisal reimbursement funds may occur if the county assessor fails to:

(A) Either request a hearing or return the signed and dated compliance verification form within thirty (30) days from the date of the notice; or

(B) Complete the corrective action within the time provided in the compliance verification form.

History. Acts 1897, No. 30, § 1, p. 38; C. & M. Dig., § 9856; Acts 1929, No. 221, § 1; Pope's Dig., § 13600; A.S.A. 1947, § 84-203; Acts 2009, No. 421, § 1; 2011, No. 867, §§ 1, 2.

Amendments. The 2009 amendment added (c).

The 2011 amendment rewrote (a); and added (d).

Cross References. Arkansas Real Property Reappraisal Fund, § 26-26-1907.

RESEARCH REFERENCES

Ark. L. Rev. Real Property — Scope of the Term “Minerals” in a Mineral Deed, 4 Ark. L. Rev. 249.

Oil and Gas — Severance of Surface from Mineral Title, 16 Ark. L. Rev. 301.

CASE NOTES

ANALYSIS

Constitutionality.
Construction.
Applicability.
Deeds; Recording.
Leases.
Separate Assessment.
Valuation.

Constitutionality.

This section is not unconstitutional as discriminating against corporations in favor of individuals. *State ex rel. Attorney Gen. v. Arkansas Fuel Oil Co.*, 179 Ark. 848, 18 S.W.2d 906 (1929); *Arkansas Fuel Oil Co. v. State*, 180 Ark. 765, 22 S.W.2d 556 (1929).

Construction.

This section permitting separate assessment has been interpreted broadly, and there is no requirement that there be a conveyance of the minerals in place in order to effect a sufficient severance to invoke the separate assessment statute. *Edwards v. Hall*, 267 Ark. 1003, 593 S.W.2d 465 (1980).

Applicability.

This section is intended to apply to the assessment of property for general taxes rather than to an assessment of benefits by an improvement district. *Long Prairie Levee Dist. v. Wall*, 227 Ark. 305, 298 S.W.2d 52 (1957).

Deeds; Recording.

Exclusion of “coal and mineral deposits” from executed deed did not reserve oil and gas. *Missouri P.R.R. v. Strohacker*, 202 Ark. 645, 152 S.W.2d 557 (1941).

The effect of mineral deeds placed of record is to constitute a constructive severance of the minerals from the surface and to make two titles, one the surface and the other the mineral title. *Skelly Oil Co. v. Johnson*, 209 Ark. 1107, 194 S.W.2d 425 (1946).

Where railroad executed deed to certain land, but reserved coal and mineral deposits, and state thereafter made an assessment against minerals in the land, and later issued a tax deed for such minerals to another, original grantee of land from railroad was entitled to oil and gas rights, as oil and gas was not included in mineral reservation, and taxes on the surface covered taxes against oil and gas. *Brizzolara v. Powell*, 214 Ark. 870, 218 S.W.2d 728 (1949).

Deeds for sale of real estate for nonpayment of taxes on mineral interests could be set aside because of faulty methods of recording assessments of mineral interests. *Sorkin v. Myers*, 216 Ark. 908, 227 S.W.2d 958 (1950) (decision under prior law).

Mineral interests severed from the soil are to be arranged according to the land assessments and not alphabetically by

names of owners. *Sorkin v. Myers*, 216 Ark. 908, 227 S.W.2d 958 (1950).

Tax title obtained on mineral interests was void where names of owners were listed alphabetically under each school district instead of by section, township, and range. *Stienbarger v. Keever*, 219 Ark. 411, 242 S.W.2d 713 (1951).

Leases.

A lessee under an oil and gas lease acquires an interest in the land subject to assessment separate and apart from the assessment of the fee. *State ex rel. Attorney Gen. v. Arkansas Fuel Oil Co.*, 179 Ark. 848, 18 S.W.2d 906 (1929); *Arkansas Fuel Oil Co. v. State*, 180 Ark. 765, 22 S.W.2d 556 (1929).

While minerals may be assessed separately from lands containing them, the mere fact of leasing lands for exploration purposes does not, ipso facto, create such severance. *Quality Coal Co. v. Guthrie*, 203 Ark. 433, 157 S.W.2d 756 (1941).

An oil and gas lease does not of itself constitute constructive severance of the estate, but conveys only an interest and easement in the land, passing no title until the oil and gas are reduced to possession, and a short-term nonproducing mineral lease is not such a severance as to fall within this section. *Garvan v. Kimsey*, 239 Ark. 295, 389 S.W.2d 870 (Ark. 1965).

Separate Assessment.

When there has been a severance of mineral rights by a deed duly recorded,

such rights must be assessed separately and apart from the surface rights. *Huffman v. Henderson Co.*, 184 Ark. 278, 42 S.W.2d 221 (1931).

When mineral rights have not been assessed separately from the surface rights, the assessment will be held to apply only to the surface rights, and a sale under this assessment will operate to convey title only to the surface rights. *Huffman v. Henderson Co.*, 184 Ark. 278, 42 S.W.2d 221 (1931).

Where the mineral interest was assessed and taxed separately from the surface land and the owner of a one-half interest in the minerals failed to pay the taxes, his property rights in the one-half mineral interest, which were to terminate in 25 years, were immediately forfeited when his mineral interest was sold at a tax sale, and the tax deed vested complete title in a one-half mineral interest in the purchaser. *Edwards v. Hall*, 267 Ark. 1003, 593 S.W.2d 465 (1980).

Valuation.

Under this section, gas that remains as a mineral in the ground is valued at zero, but a value is assessed for tax purposes if it is produced and sold. Such mineral interests are tangible real property to be valued by county assessors and taxed equally and uniformly, as required by Ark. Const. Art. 16, § 5. *May v. Debraakers-Lang*, 2012 Ark. 7, — S.W.3d — (2012).

Cited: *United States v. Wheeler*, 161 F. Supp. 193 (W.D. Ark. 1958).

26-26-1111. Mineral and surface estates owned by same person.

When the mineral estate and the surface estate in land shall become vested in the same person, after a prior severance by deed or otherwise, the two (2) estates shall merge and be considered as a single interest or estate and shall be assessed and carried on the assessment books in the same manner as provided by law for interests or estates in land where the mineral interest has never been severed from the surface estate.

History. Acts 1957, No. 366, § 1; A.S.A. 1947, § 84-203.1.

26-26-1112. Separate records for severed mineral interests.

County assessors may maintain separate records for severed mineral interests if the records are maintained by legal description of the surface estate in the same manner as records of the estates are maintained.

History. Acts 1985, No. 961, § 1; A.S.A. 1947, § 84-203.2.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Well, Now, Ain't That Just Fugacious!: A Basic Primer on Arkansas Oil and Gas Law, 29 U. Ark. Little Rock L. Rev. 211.

CASE NOTES

Retroactive Application.

In a quiet title action, this section was not given retroactive application because the tax forfeiture at issue occurred long before this section was enacted and the Arkansas Supreme Court had previously declined to give this section retroactive application. *Selrahc Ltd. P'ship v. Seeco,*

Inc., 2009 Ark. App. 865, — S.W.3d — (2009), review denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 216 (Apr. 15, 2010), cert. denied, — U.S. —, 131 S. Ct. 280, 178 L. Ed. 2d 140 (2010).

Cited: *Gilbreath v. Union Bank*, 309 Ark. 360, 830 S.W.2d 854 (1992).

26-26-1113. Property used for other than church purposes.

(a) All personal property owned by any church and held for, or used for, commercial, business, rental, or investment purposes or purposes other than church purposes shall be listed for assessment annually for ad valorem tax purposes between the first Monday in January and May 31 of each year.

(b) The church or its governing official or board shall annually list for assessment for ad valorem tax purposes all property which is not exempted from the tax under the provisions of this chapter.

(c)(1) The Assessment Coordination Department shall promulgate reasonable rules and regulations to effectuate the provisions of this chapter.

(2) The department shall certify to the various county assessors and to each church in this state, upon request therefor, guidelines to be used in listing nonexempt property for assessment under the provisions of this chapter.

History. Acts 1987, No. 1040, §§ 1, 2; 2011, No. 175, § 6.

Amendments. The 2011 amendment, in (a), deleted “real or” following “All” and substituted “May 31” for “April 10.”

Cross References. Parsonages, § 26-3-303.

Property exempt from taxes generally, § 26-3-301.

Property taxed according to value, procedures for valuation and tax exemptions, Ark. Const., Art. 16, § 5.

Property used for other than church purposes — exemptions, § 26-3-206.

26-26-1114. Assessment of personal property taxes by mail or by telephone.

(a) For any assessment of personal property taxes after December 31, 1993, a taxpayer may assess the personal property taxes by mail, by telephone, or in person.

(b)(1) The county assessor shall permit assessment of real and personal property of individuals by telephone without a signature verification under oath.

(2) The assessment by telephone shall not apply to business, commercial, and industrial real and personal property assessments.

(3)(A) The county assessor shall mail to individuals assessing personal property by telephone, within five (5) working days from the date of assessment by telephone, an assessment containing a certification, which shall be provided by the county collector, indicating whether all required personal property taxes have been paid.

(B) The county assessor shall provide, if requested, proof of assessment for each motor vehicle assessed and proof of said payment information appropriate for motor vehicle registration renewal by mail.

(c) The Director of the Assessment Coordination Department shall promulgate regulations for the administration of this section. The forms and regulations promulgated by the director shall apply to all counties in the state.

History. Acts 1989, No. 517, § 1; 1991, No. 291, § 1; 1993, No. 1261, § 1.

Cross References. Tangible personal property, § 26-26-1401 et seq.

26-26-1115. Apportionment of realty taxes.

(a)(1) When a person acquires ownership of a portion of a parcel of realty during the time of year when the county assessor is not making changes in the assessment book, that person may request the county assessor to apportion the current assessment between the remaining portion of the parcel and that acquired by the person making the request; provided, however, that:

(A) All necessary deeds and papers proving ownership of the portion have been filed with the county recorder;

(B) No provision has been made for payment of taxes on the realty at the time the person acquired the portion; and

(C) The request is made at least thirty (30) days before the last day to pay taxes on the assessment year in question.

(2) The request shall be in writing, signed by the owner, and shall include a complete legal description of the entire parcel and a complete legal description of the parcel being conveyed.

(b) The provisions of this section shall not apply to any parcel of realty on which there is an actual tax delinquency at the time the request for allocation is made.

(c) The county assessor shall allocate the assessment within thirty (30) days after the request and shall provide the information included in the allocation to the county collector.

(d)(1) The county collector, after receiving notification of the allocation, shall accept payment in full toward any prior year's taxes currently due according to the values provided in the notification.

(2) Payment may be applied to the current tax bill as a partial payment, or a separate parcel number may be assigned to the portion and receipted to the new number.

(e) Payment shall be considered as satisfying the tax lien for that portion of the prior year's taxes as legally defined in the notification.

History. Acts 1993, No. 859, § 1.

26-26-1116. [Repealed.]

Publisher's Notes. This section, concerning land modification, was repealed by Acts 2007, No. 994, § 2. The section was derived from Acts 1999, No. 486, § 1.

26-26-1117. [Repealed.]

Publisher's Notes. This section, concerning a contingent limitation on increase of property's assessed value, was repealed by identical Acts 2000 (2d Ex. Sess.), Nos. 1 and 2, § 5. The section was derived from Acts 1999, No. 1492, § 1. For present law, see Ark. Const. Amend. 79 and § 26-26-1118.

26-26-1118. Limitation on increase of property's assessed value.

(a)(1)(A) There is established a homestead property tax credit for each assessment year that reduces the amount of real property taxes assessed on the homestead of each property owner by three hundred fifty dollars (\$350).

(B) However, an assessment shall not be reduced to less than zero dollars (\$0.00).

(2) Each property owner shall pay the reduced tax amount to the county.

(3) The homestead property tax credit adopted by this section shall be reflected on the tax bill sent to the property owner by the county collector.

(4) The county and taxing units within the county are entitled to reimbursement of the tax reduction resulting from the homestead property tax credit in accordance with § 26-26-310.

(b)(1) Each county assessor is responsible for identifying the parcels of real property that are used as homestead residences before issuing tax bills.

(2)(A) Each property owner shall register with the county assessor proof of eligibility for the property tax credit if the property owner intends to claim a property tax credit.

(B)(i) The registration may be attached to the deed or other instrument conveying an interest in real property and filed with the circuit clerk, who shall remit the registration to the county assessor.

(ii) The circuit clerk shall not file the registration described in this subdivision (b)(2).

(C) The property owner may submit a registration for the property tax credit directly to the county assessor.

(3) The property tax credit authorized by subdivision (a)(1) of this section shall not be allowed after October 15 of the year after the assessment.

(4)(A) A parcel of real property shall qualify as a homestead prior to January 1 of the year after assessment to be eligible for the property tax credit.

(B) Once a parcel of real property is determined to be eligible for the property tax credit, the parcel of real property shall remain eligible for that year regardless of a change in the use of the parcel of real property during the year.

(5)(A) The parties to a transfer of real property may prorate, as between themselves, the property tax credit and the benefits of the property tax credit by agreement of the parties.

(B) If a parcel of real property qualifies for the property tax credit, the property tax credit shall apply regardless of who or what entity pays the property tax.

(6)(A) When real property is transferred, the purchaser of the real property shall notify the county assessor of the new use of the real property.

(B) The notification may be by affidavit provided by the purchaser of the real property or on a form provided by the county assessor.

(7)(A) The Division of Vital Records of the Department of Health shall send to the county assessor a monthly report listing the residents of that county who have died.

(B) The report shall be sent to each county assessor by:

- (i) Electronic mail;
- (ii) Fax; or
- (iii) United States Postal Service.

History. Acts 2000 (2d Ex. Sess.), Nos. 1 and 2, § 6; 2001, No. 1544, § 3; 2001, No. 1598, § 1; 2003, No. 864, § 1; 2005, No. 1268, § 1; 2005, No. 1892, § 1; 2007, No. 142, § 1; 2007, No. 827, § 202; 2009, No. 655, § 4; 2011, No. 175, § 7.

Amendments. The 2009 amendment substituted “three hundred fifty dollars (\$350)” for “three hundred dollars (\$300)” in (a)(1)(A); deleted (a)(1)(B), which read: “Effective with the assessment year 2007 and thereafter, the amount of real property taxes assessed on the homestead of each property owner shall be reduced by three hundred fifty dollars (\$350); reded-

ignated the subsequent subdivision; and made a minor stylistic change.

The 2011 amendment rewrote (b)(2)(B)(ii); and, in (b)(3), substituted “The” for “In no event shall the,” inserted “shall not,” and substituted “October 15” for “October 10.”

Cross References. Certification of amount of property tax reduction, § 26-26-310.

Property tax relief, Ark. Const. Amend. 79.

Property Tax Relief Trust Fund, § 19-5-1103.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General As-

sembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

26-26-1119. Prohibited conduct — Penalties — Time limitation.

(a)(1) No property owner shall claim more than one (1) homestead property tax credit for each year.

(2)(A) If the county assessor determines that a property owner has claimed more than one (1) homestead property tax credit in a year, in addition to repayment of the homestead property tax credit, the designated preparer of the tax books shall extend a penalty of one hundred percent (100%) of the amount of the unlawfully claimed homestead property tax credit.

(B)(i) If the property owner has unlawfully claimed a homestead property tax credit in a county other than the county where his or her lawfully claimed homestead property tax credit was claimed, then the property owner shall pay the entire amount of the unlawfully claimed homestead property tax credit and the penalty at the time of payment of the property owner's taxes.

(ii) If the property owner has unlawfully claimed a homestead property tax credit in the same county that he or she lawfully claimed a homestead property tax credit, then the property owner shall elect to either:

(a) Pay the entire amount of the unlawfully claimed homestead property tax credit and the penalty at the time of payment of the property owner's taxes; or

(b) Not claim a homestead property tax credit on any property in the county or on any other property in the state for two (2) years for each year that the credit was claimed unlawfully.

(C) In order to qualify for the homestead property tax credit after repayment of an unlawfully claimed homestead property tax credit and payment of a penalty, the property owner shall register with the county assessor according to § 26-26-1118(b)(2)(A).

(b)(1) Every property owner shall report to the county assessor a change in eligibility to claim a property tax credit or a change in use of the property prior to January 1 of the year following the change.

(2) If the county assessor determines that a property owner has failed to report a change in the eligibility to claim a property tax credit or has failed to register a required change in the use of the property, the designated preparer of the tax books shall extend, in addition to repayment of the unlawfully claimed homestead property tax credit, the correct property tax due along with a penalty of one hundred percent (100%) of the amount of the unlawfully claimed homestead property tax credit.

(3)(A) If the property owner has unlawfully claimed a homestead property tax credit in a county other than the county where his or her lawfully claimed homestead property tax credit was claimed, then the property owner shall pay the entire amount of the unlawfully claimed homestead property tax credit and the penalty at the time of payment of the property owner's taxes.

(B) If the property owner has unlawfully claimed a homestead property tax credit in the same county that he or she lawfully claimed

a homestead property tax credit, then the property owner shall elect to either:

(i) Pay the entire amount of the unlawfully claimed homestead property tax credit and the penalty at the time of payment of the property owner's taxes; or

(ii) Not claim a homestead property tax credit on any property in the county or on any other property in the state for two (2) years for each year that the credit was claimed unlawfully.

(c)(1) Penalties assessed under this section shall bind the real property and shall be entitled to preference over all judgments, executions, encumbrances, or liens, whenever created, until the penalties are repaid.

(2) Penalties collected under this section shall be remitted to the county treasurer to be credited to the county general fund.

(d)(1) The debt owed for the repayment of an unlawfully claimed homestead property tax credit assessed under this section shall bind the real property and shall be entitled to preference over all judgments, executions, encumbrances, or liens, whenever created, until it is repaid.

(2) A homestead property tax credit repaid under this section from a person who was not entitled to claim a credit shall be remitted to the Treasurer of State for deposit into the Property Tax Relief Trust Fund.

(e)(1) The property owner may appeal to the county court the determination by a county assessor that:

(A) The property owner shall repay an unlawfully claimed homestead property tax credit;

(B) The property owner shall pay penalties; or

(C) Any other determination that the property owner has violated this section.

(2) To appeal the determination by a county assessor, the property owner must file a petition with the county court within thirty (30) days from the date of the determination by the county assessor.

(3) After the petition is filed, the county court shall set a hearing within thirty (30) days after the filing of the petition.

(4) At the hearing, the property owner and county assessor shall present evidence to support their positions.

(5) The county court shall provide the property owner, county assessor, and county clerk with the county court's decision in writing within ten (10) business days after the hearing.

(6) The property owner or county assessor may appeal the county court's decision to circuit court within thirty (30) days after the date of the decision.

(f)(1) No penalties under this section shall be imposed against a property owner for an unlawfully claimed property tax credit after the expiration of three (3) years from the date the property tax credit was claimed.

(2) No repayment requirement under this section shall be imposed against a property owner for an unlawfully claimed property tax credit after the expiration of three (3) years from the date the property tax credit was claimed.

(3) This section does not alter the property owner's deadline to claim the homestead property tax credit as provided in § 26-26-1118(b)(3).

History. Acts 2001, No. 1544, § 4; 2003, No. 1354, § 1.

Cross References. Property Tax Relief Trust Fund, § 19-5-1103.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Tax Credit, 26 U. Ark. Little Rock L. Rev. Legislation, 2003 Arkansas General Assembly, Taxation, Homestead Property 501.

26-26-1120. Disabled persons.

(a) As used in Arkansas Constitution, Amendment 79, "disabled person" means a person who:

(1) Is disabled for purposes of Subchapter XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., as in effect on January 1, 2003, for any period during the calendar year;

(2) Is a permanently and totally disabled veteran as defined by 38 C.F.R. § 4.1 et seq., Part IV, as in effect on January 1, 2003; or

(3) Has received permanent and total disability insurance benefits for any period of time during the calendar year.

(b)(1) When a disabled person or a person sixty-five (65) years of age or older sells his or her real property, the purchaser shall not be entitled to claim any reduction to the real property's assessed value.

(2) On or after January 1 of the year following the date of the sale, the county assessor shall assess the real property at its full market value, unadjusted for assessment limitations required by Arkansas Constitution, Amendment 79.

History. Acts 2001, No. 1544, § 5; 2003, No. 646, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Taxation, Disabled Person Defined, 26 U. Ark. Little Rock L. Rev. 496.

26-26-1121. Determination of millage rollback.

(a) To determine whether a rollback of millage rates is required under Arkansas Constitution, Article 16, § 14, each taxing entity shall compare the adjusted taxable assessed values of the real and personal property in the current year to the adjusted taxable assessed values of the real and personal property in the preceding year.

(b) To calculate the millage rollback, the adjusted taxable assessed value of the real property in the current year shall be compared to the adjusted taxable assessed value of real property in the preceding year.

History. Acts 2001, No. 1793, § 2.

§ 1, provided: "(a) It is determined by the General Assembly that confusion exists

A.C.R.C. Notes. Acts 2001, No. 1793,

with regards to the year to be used in determining rollback of millage rates under Amendment 79 to the Constitution of Arkansas and Article 16, Section 14 of the Constitution of Arkansas. (b) Upon a review of Amendment 79 in conjunction with Article 16, Section 14, it is the intent of the General Assembly that the rollback

of millage rates be based upon the adjusted assessed value of the property in the current year compared to the adjusted assessed value of the property in the preceding year so as to simplify and make equitable the administrative implementation of Amendment 79."

26-26-1122. Definitions.

(a) As used in this subchapter and in the Arkansas Constitution, Amendment 79:

(1)(A) "Homestead" means the dwelling of a person that is used as his or her principal place of residence with the contiguous land, excluding all land valued as agricultural land, pasture land, or timber land.

(B) "Homestead" shall also include a dwelling owned by a revocable trust and used as the principal place of residence of a person who formed the trust;

(2) "New construction" means changes to real property that have occurred to real property already on the assessment roll;

(3) "Newly discovered real property" means real property that has never been on the assessment roll or that has changed use; and

(4)(A) "Property owner" means a person who is:

(i) The owner of record of real property or the mortgagee of the real property;

(ii) A buyer under a recorded contract to purchase real property; or

(iii) A person holding a recorded life estate in real property.

(B) "Property owner" shall include the previous record owner of tax-delinquent real property that has vested in the State of Arkansas in care of the Commissioner of State Lands under § 26-37-101(c) if the previous record owner continues to occupy the residence subject to his or her right of redemption.

(b) The Assessment Coordination Department may by rule define the term "substantial improvements" and any other term necessary to administer this subchapter.

History. Acts 2005, No. 1268, § 2.

CASE NOTES

ANALYSIS

Homestead.

Newly Discovered Real Property.

Homestead.

Actual personal service of notice under this section was not required in a tax sale case in which there was no evidence that the property involved was a "homestead,"

as defined in subdivision (a)(1) of this section, and where a signed receipt, indicating that the notice was received, was returned to the commissioner. *Metro Empire Land Ass'n v. Arlands*, 2012 Ark. App. 350, — S.W.3d — (2012).

Newly Discovered Real Property.

Circuit court did not err in finding that improvements made to a taxpayer's prop-

erty prior to his sixty-fifth birthday were “substantial improvements” within the meaning of Ark. Const. Amend. 79, § 1 and that a county equalization board and a tax assessor could include those improvements in the assessment of the taxpayer’s property because the definition of “substantial improvements” under 177-01-001 Ark. Code R. 4.08.1 included renovation, reconstruction, and refurbishment

such as that done by the taxpayer; the improvements were changes that occurred to property already on the assessment roll and could not be classified as “newly discovered real property” under Rule 4.08.1 and subdivision (a)(3) of this section. *Curry v. Pope County Equalization Bd.*, 2011 Ark. 408, — S.W.3d — (2011).

26-26-1123. Sale of real property.

(a) When a person sells his or her real property, the county assessor shall assess the real property at twenty percent (20%) of the appraised value at the next assessment date after the date of the transfer of title to the real property.

(b) The owner of real property to whom title is transferred by a sale is not entitled to claim any limitation on the assessed value of the real property until the second assessment date after the date of the transfer of title to the real property.

(c) This section does not apply to any transfer of title to real property claimed as a homestead in which the owner or beneficiary of the homestead retains a life-estate interest in the homestead following the transfer of title to the real property.

History. Acts 2005, No. 2284, § 1; 2007, No. 827, § 203.

26-26-1124. Property tax relief for persons disabled or more than sixty-five years of age.

(a)(1) A homestead used as the taxpayer’s principal place of residence that is purchased or constructed on or after January 1, 2001, by a person who is disabled or by a person sixty-five (65) years of age or older shall be assessed for property tax thereafter based on the lower of:

(A) The assessed value as of the date of purchase or construction;
or

(B) A later assessed value.

(2) When a person becomes disabled or reaches sixty-five (65) years of age on or after January 1, 2001, the person’s homestead that is used as the taxpayer’s principal place of residence shall thereafter be assessed based on the lower of:

(A) The assessed value on the person’s sixty-fifth birthday;

(B) The assessed value on the date the person becomes disabled; or

(C) A later assessed value.

(3) If a person is disabled or is at least sixty-five (65) years of age and owns a homestead used as the taxpayer’s principal place of residence on January 1, 2001, the homestead shall be assessed based on the lower of:

(A) The assessed value on January 1, 2001; or

(B) A later assessed value.

(b) Residing in a nursing home does not disqualify a person from the benefits of subsection (a) of this section.

(c) If a homestead is jointly owned and one (1) of the owners qualifies under subsection (a) of this section, then all owners shall receive the benefits of subsection (a) of this section.

(d) Subsection (a) of this section does not apply to substantial improvements to real property.

History. Acts 2009, No. 151, § 2.

Cross References. Property tax relief, Ark. Const., Amend. 79.

SUBCHAPTER 12 — VALUATION OF PROPERTY

SECTION.

26-26-1201. Date of valuation.

26-26-1202. Valuation procedures.

26-26-1203. Merchants.

26-26-1204. Accounts and notes included in merchant's valuation.

SECTION.

26-26-1205. Manufacturers.

26-26-1206. Federally funded housing for elderly or handicapped.

26-26-1207. Motor vehicle dealer inventory.

Cross References. Tax Division created, § 26-24-101 et seq.

Preambles. Acts 1887, No. 13 contained a preamble which read: "Whereas, 1ST. Lands have been sold to the State under proceedings purporting to have been had in the courts of this State by virtue of an Act of the General Assembly thereof entitled 'An Act to enforce the payment of Overdue Taxes,' approved March 12, 1881, when the taxes for the alleged nonpayment of which such lands were so sold under said proceedings and decrees of said courts, had been in fact paid prior to any such sales, proceedings or decrees of said courts; and,

"Whereas, 2D. Also the lands of many other persons were under like proceedings and decrees aforesaid had, by virtue of said act, sold to the State, where the owners thereof had paid taxes which they supposed were on such lands of their own, but which taxes so paid, owing to an erroneous description in the numbers of the same afterwards were ascertained to be on other lands than their own, and their lands sold to the State as aforesaid; and,

"Whereas, 3D. Said overdue tax act was a novel proceeding in this State that was productive of hardships in other respects, and it is but just to them that the owners of land at the time of such sale to the

State, should have a limited time to redeem the same therefrom, without loss to the State, provided said lands shall not have been sold by the State prior to any such application to redeem;

"Now, therefore...."

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

Acts 1887, No. 92, § 58: effective on passage.

Acts 1929, No. 172, § 4: approved Mar. 22, 1929. Emergency clause provided: "It is ascertained and hereby declared that the present system of assessing property for taxation is defective, unfair, unjust and inequitable; that the changes herein contemplated are necessary in order to bring about a more equitable distribution of the costs of government, so that the immediate operation of the Act is essential for the preservation of the public peace, health and safety, and an emergency is therefore declared, and this Act shall take effect and be in force from and after its passage."

Acts 1967, No. 454, § 3: effective for the year 1967 and thereafter.

Acts 1981, No. 261, § 4: approved Feb. 27, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that since the enactment of Act 454 of 1967, Section 202 of the National Housing Act of 1959 has been

amended to include housing for handicapped persons as well as elderly persons; that Act 454 of 1967 should be amended to include housing for the handicapped as well as elderly persons in order that it will conform to the provisions of Section 202 of the National Housing Act of 1959; that this Act is designed to revise Act 454 of 1967, to accomplish this purpose and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage."

Acts 1993, No. 1124, § 6: Apr. 13, 1993. Emergency clause provided: "It is hereby

found and determined by the General Assembly that motor vehicles are unique in regard to the procedure for assessment for personal property taxes, registration and titling, and payment of sales taxes; that there is a correlation between sales of motor vehicles by motor vehicle dealers and the valuation of motor vehicle inventory; and that this act is necessary to provide a fair method of assessing such motor vehicle inventories. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 72 Am. Jur. 2d, State Tax., § 753 et seq.

C.J.S. 84 C.J.S., Tax., § 410 et seq.

26-26-1201. Date of valuation.

All property in this state shall be assessed by the authorized authorities according to its value on January 1. However, stocks of merchants and manufacturers shall be assessed at the value of the average stock in possession or under control during the year immediately preceding January 1 of the year in which assessment is required.

History. Acts 1929, No. 172, § 1; Pope's Dig., § 13680; A.S.A. 1947, § 84-426.

CASE NOTES

ANALYSIS

Appellate Review.
Value.

Appellate Review.

Courts can only review real property assessments and reverse them and send them back to the executive department when they are clearly erroneous, manifestly excessive, or confiscatory. *Tuthill v. Arkansas County Equalization Bd.*, 303 Ark. 387, 797 S.W.2d 439 (1990).

Value.

The Arkansas Constitution requires the assessment of property on the basis of

current market value. *Arkansas Pub. Serv. Comm'n v. Pulaski County Bd. of Equalization*, 266 Ark. 64, 582 S.W.2d 942 (1979), superseded by statute as stated in, *Clark v. Union P. R. Co.*, 294 Ark. 586, 745 S.W.2d 600 (Ark. 1988), (decision prior to Const. Amend. 59).

Cited: *Arkansas Tax Comm'n v. Ashby*, 217 Ark. 759, 233 S.W.2d 361 (1950); *City of Fayetteville v. Phillips*, 306 Ark. 87, 811 S.W.2d 308 (1991).

26-26-1202. Valuation procedures.

(a)(1) Each separate parcel of real property shall be valued at its true market value in money, excluding the value of crops growing thereon.

(2) The price at which the real estate would sell at auction or at a forced sale shall not be taken as the criterion of the true value.

(b) Each tract of land belonging to the state or to any county, city, town, or charitable institution, whether incorporated or unincorporated, and saline, swamp, seminary, school, or mineral lands held under a lease exceeding five (5) years and not exceeding ten (10) years shall be valued at the price the county assessor believes could be obtained at a private sale for the leasehold estate.

(c)(1) Personal property of any description shall be valued at the usual selling price of similar property at the time of listing.

(2) If any personal property shall have no well-fixed or determined value in that locality at the time, then it shall be appraised at such price as in the opinion of the county assessor could be obtained at that time and place.

(d) Investments in bonds, stocks, joint-stock companies, or otherwise shall be valued at their value in money, and the quotations and selling price thereof may be considered in determining their values.

(e) Money, whether in possession or on deposit in this state, or out of it subject to the order or control of the person listing, shall be entered in the statement at the full amount thereof.

(f) Every credit for a sum certain, payable either in money, property of any kind, labor, or service, shall be assessed according to its true value. If for a specified number or quantity of any article of property, for a certain amount of labor, or for services of any kind, it shall be assessed according to its true value.

(g) Annuities or moneys receivable at a stated period shall be rated at the price which they may be worth in money.

(h) Where the fee of the soil in any tract, parcel, or lot of land is in any person, natural or artificial, and the right to any mineral therein is in another, it shall be valued and listed agreeably to the ownership, in separate entries, and taxed to the parties owning it respectively.

History. Acts 1883, No. 114, § 68, p. 199; C. & M. Dig., § 9919; Pope's Dig., § 13653; A.S.A. 1947, § 84-428.

A.C.R.C. Notes. Pursuant to Arkansas Constitution, Amendments 57 and 71, and § 26-3-302, intangible personal property and "items of household furniture and furnishings, clothing, appliances, and other personal property used within the home, if not held for sale, rental, or other commercial or professional use", are ex-

empt from ad valorem taxes. Additional ad valorem tax exemptions for public property, churches, cemeteries, schools, libraries, charities, and textile mills are found in Arkansas Constitution, Article 16, § 5(b), and Arkansas Constitution, Amendment 12. See also § 26-3-301 et seq.

Cross References. Property taxed according to value — Procedures for valuation, Ark. Const., Art. 16, § 5.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Seventeenth Annual Survey of Arkansas Law — Property, 17 U. Ark. Little Rock L.J. 453.

CASE NOTES

ANALYSIS

Current Use.
Depreciation.
True Value.

Current Use.

Current use is a factor to be considered in making a property assessment, but it is only one factor; “use” is not restricted to current use, but rather to “the uses to which it may be put.” *Gazaway v. Greene County Equalization Bd.*, 314 Ark. 569, 864 S.W.2d 233 (1993).

Depreciation.

The assessor’s decision to value computers by the cost-less-depreciation method over six years, rather than to use the fair market value evidenced by various trade magazines, was not clearly erroneous, arbitrary, or confiscatory. *IBM Credit Corp. v. Pulaski County*, 316 Ark. 580, 873 S.W.2d 161 (1994).

True Value.

The assessment to be placed upon mineral lands depends upon their market value. *Ex parte Ft. Smith & Van Buren Bridge Co.*, 62 Ark. 461, 36 S.W. 1060 (1896); *American Bauxite Co. v. Board of Equalization*, 119 Ark. 362, 177 S.W. 1151 (1915).

Although this section requires all property in the state to be assessed for taxation at its full value, it was a defense to an action to require the assessor in a certain county to assess the property in the county at its full value that the property in the other counties of the state was assessed at less than its full value. *State ex rel. Nelson v. Meek*, 127 Ark. 349, 192 S.W. 202 (1917).

Where, in 1970, the assessor’s office listed a piece of property at \$74,684 valuation for tax purposes based on a front footage formula, but in 1969, the property had actually sold for \$30,000, the tax valuation of \$74,684 could not be supported. *Lile v. Pulaski County Bd. of Equalization*, 252 Ark. 508, 479 S.W.2d 856 (1972).

Constitution, Art. 16, § 5 requires the assessment of property on the basis of current market value. *Arkansas Pub. Serv. Comm’n v. Pulaski County Bd. of Equalization*, 266 Ark. 64, 582 S.W.2d 942 (1979), superseded by statute as stated in, *Clark v. Union P. R. Co.*, 294 Ark. 586, 745 S.W.2d 600 (Ark. 1988) (decision prior to Const. Amend. 59).

Cited: *Pulaski County Bd. of Equalization v. American Republic Life Ins. Co.*, 233 Ark. 124, 342 S.W.2d 660 (1961).

26-26-1203. Merchants.

(a) Any person owning or having in his or her possession or under his or her control, within this state, with authority to sell it, any personal property purchased with a view to its being sold at a profit, or which has been consigned to him or her from any place out of this state, to be sold within this state, shall be held to be a merchant for the purpose of this valuation.

(b)(1) The property shall be listed for taxation and in estimating the value the merchant shall take the average value of the property in his or her possession or under his or her control during the year immediately preceding January 1 of the year in which the assessment is made.

(2) If the merchant has not been engaged in the business for one (1) year, then he or she shall take the average valuation during such time as he or she shall have been so engaged.

(3) If the merchant is commencing business, he or she shall take the value of the property at the time of assessment.

History. Acts 1883, No. 114, § 26, p. Dig., § 9942; Pope's Dig., § 13726; A.S.A. 199; 1887, No. 92, § 10, p. 143; C. & M. 1947, § 84-429.

CASE NOTES

Cited: Froug-Smullion & Co. v. Pulaski County, 103 Ark. 397, 147 S.W. 72 (1912).

26-26-1204. Accounts and notes included in merchant's valuation.

Each merchant in giving a list of value of personal property as provided in § 26-26-1203 shall include in the valuation all good balances of accounts on his or her books and all notes at their true value in money, and the list shall be rendered under oath as prescribed in cases of personal property.

History. Acts 1883, No. 114, § 27, p. 199; C. & M. Dig., § 9943; Pope's Dig., § 13727; A.S.A. 1947, § 84-430.

26-26-1205. Manufacturers.

(a) Every person who shall purchase, receive, or hold personal property of any description for the purpose of adding to the value thereof by process of manufacturing, refining, rectifying, or by combination of different materials, with a view of making a gain or profit by so doing, shall be held to be a manufacturer. He or she shall make out and deliver to the county assessor a sworn statement of the amount of his or her other personal property subject to taxation, also including in his or her statement the average value, estimated as provided in § 26-26-1203, of all articles purchased, received, or otherwise held for the purpose of being used, in whole or in part, in any process or operation of manufacturing, combining, rectifying, or refining which from time to time he or she shall have on hand during the year next previous to the time of making the statement, if so long he or she shall have been engaged in such manufacturing business, and, if not, then during the time he or she shall have been so engaged.

(b) Every person owning a manufacturing establishment of any kind and every manufacturer shall list as a part of his or her manufacturer's stock the value of all engines and machinery of every description, used or designed to be used for the indicated purpose.

History. Acts 1883, No. 114, § 28, p. 199; C. & M. Dig., § 9944; Pope's Dig., § 13728; A.S.A. 1947, § 84-431.

CASE NOTES

ANALYSIS

Persons Included.
Property Included.

Persons Included.

A company owning land and engaged in sawing timber on it into lumber and shingles is a manufacturer within this section. *Arkansas Cypress Shingle Co. v. Lonoke County*, 74 Ark. 28, 84 S.W. 1029 (1905).

Property Included.

Timbers belonging to railroad companies on hand for treatment at creosoting plant need not be listed for assessment as the manufacturer is required only to list property which is owned by himself. *North Little Rock Special School Dist. v. Koppers Co.*, 211 Ark. 322, 200 S.W.2d 519 (1947).

26-26-1206. Federally funded housing for elderly or handicapped.

(a) Housing owned and operated by a nonprofit corporation or association for occupancy or use by elderly or handicapped persons, the construction of which is financed by the United States of America, shall be valued, for purposes of assessment, on the basis of the equity owned in the housing by the nonprofit corporation or association.

(b) As used in this section, unless the context otherwise requires:

(1) "Elderly person" means a person sixty-two (62) years of age or older and the spouse of that person;

(2) "Equity" means the market value of the housing less any mortgage indebtedness to the United States of America;

(3) "Handicapped person" means any adult having an impairment which is expected to be of long, continued, and indefinite duration; is a substantial impairment to his or her ability to live independently; and is of a nature that such ability to live independently would be improved by more suitable housing conditions and shall include an adult who is developmentally disabled;

(4) "Housing" means structures consisting of eight (8) or more residential units for occupancy and use by elderly or handicapped persons, including essential contiguous land and related facilities, as well as all personal property of the corporation or association used in connection with the facilities; and

(5) "Nonprofit corporation or association" means any corporation or association incorporated under the laws of this state not otherwise exempt from general ad valorem, real, and personal property taxes, operating a housing facility or project qualified, built, and financed by the United States of America under § 202 of the National Housing Act of 1959, as amended, 12 U.S.C. § 1701q.

History. Acts 1967, No. 454, §§ 1, 2; 1981, No. 261, §§ 1, 2; A.S.A. 1947, §§ 84-481, 84-482.

26-26-1207. Motor vehicle dealer inventory.

(a) The General Assembly recognizes that motor vehicles are unique in regard to the procedure for assessment of personal property taxes, registration and titling, and payment of sales taxes and that there is a correlation between sales of motor vehicles by motor vehicle dealers and the valuation of motor vehicle inventory.

(b) The method of determining the average value of inventory of motor vehicle dealers in accordance with §§ 26-26-1201 and 26-26-1203(b) shall be as provided in this section.

(c) The assessment of motor vehicle inventories of motor vehicle dealers shall be determined by calculating the monthly average of the number of sales of new and used motor vehicles by the dealer and multiplying the average by the unit inventory value.

(d) The unit inventory value shall be based on the typical new and used car values by name of manufacturer as set forth in the *Arkansas Commercial Personal Property Appraisal Manual* published in the year prior to the year of assessment by the Assessment Coordination Department.

History. Acts 1993, No. 1124, §§ 1, 2; 1997, No. 1036, § 1.

SUBCHAPTER 13 — REASSESSMENT OF PROPERTY

SECTION.

- 26-26-1301. Order upon complaint.
- 26-26-1302. Qualification of appointees.
- 26-26-1303. Power and authority.
- 26-26-1304. Compensation.

SECTION.

- 26-26-1305. Effect of reassessment.
- 26-26-1306. Liability for expenses.
- 26-26-1307. Notice of reappraisal.
- 26-26-1308. Limitations on reappraisals.

Cross References. Equalization of assessments by county equalization board, § 26-27-301 et seq.

No assessment after payment of tax except for fraud, § 26-34-107.

Effective Dates. Acts 1927, No. 129, § 38; approved Mar. 9, 1927. Emergency

clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage."

RESEARCH REFERENCES

Am. Jur. 72 Am. Jur. 2d, State Tax., § 831 et seq.

C.J.S. 84 C.J.S., Tax., § 506 et seq.

26-26-1301. Order upon complaint.

(a) Whenever, upon the complaint made to the Arkansas Public Service Commission by the county judge, county assessor, or county equalization board of any county or upon the commission’s own investigation and motion, and a summary hearing in that behalf had, it shall be made to appear satisfactorily to the commission that the assessment of the property in any county, or district or subdivision thereof, is not in substantial compliance with law and that the interest of the public will be promoted by a reassessment of the property, then the commission shall have authority, at its discretion, to order a reassessment of all or any part of the taxable property in the county, or district or subdivision thereof, to be made by the local assessment officers, or to cause a reassessment to be made by a person to be recommended by the county judge and appointed by the commission for that purpose.

(b) Due notice of the time and place fixed for a hearing upon any complaint made as indicated shall be mailed, at least fifteen (15) days before the time fixed for the hearing, to the county judge and county assessor of the county affected, and the county judge shall immediately cause the notice to be published, at the expense of the county, in a newspaper having a general circulation in the county and district.

History. Acts 1927, No. 129, § 29; Pope’s Dig., § 2055; A.S.A. 1947, § 84-464.

A.C.R.C. Notes. The authority of the Arkansas Public Service Commission with respect to the equalization and assess-

ment of property and the administration of tax laws, except with respect to public utilities and carriers, was transferred to the Assessment Coordination Department by Acts 1997, No. 436. See §§ 25-28-102 and 25-28-103.

CASE NOTES

Cited: Arkansas Tax Comm’n v. Ashby, 217 Ark. 759, 233 S.W.2d 361 (1950).

26-26-1302. Qualification of appointees.

Persons appointed to make the reassessment shall qualify without delay by severally subscribing to an oath or affirmation to support the United States Constitution and the Arkansas Constitution, and to faithfully perform the duties imposed by any order of reassessment to the best of their ability, and shall file it with the Arkansas Public Service Commission.

History. Acts 1927, No. 129, § 29; Pope’s Dig., § 2055; A.S.A. 1947, § 84-464.

A.C.R.C. Notes. The authority of the Arkansas Public Service Commission with respect to the equalization and assess-

ment of property and the administration of tax laws, except with respect to public utilities and carriers, was transferred to the Assessment Coordination Department by Acts 1997, No. 436. See §§ 25-28-102 and 25-28-103.

CASE NOTES

Cited: Arkansas Tax Comm'n v. Ashby, 217 Ark. 759, 233 S.W.2d 361 (1950).

26-26-1303. Power and authority.

(a) Any person appointed to reassess the property or any class of property in any county, or district or subdivision thereof, shall have all the power and authority given by law to deputy county assessors and shall perform all the duties and be subject to all restrictions and penalties imposed by law upon deputy county assessors.

(b)(1) Appointees shall have access to all public records and files which may be needful or serviceable in the performance of the duty imposed and while engaged in this duty shall be entitled to have the custody and possession of the assessment roll containing the original assessment in the district and all other statements and memoranda relative thereto.

(2) A blank assessment roll, if necessary, and all property statements and other blank forms needful for the purpose of reassessment shall be furnished by the county clerk at the expense of the county.

History. Acts 1927, No. 129, § 29; Pope's Dig., § 2055; A.S.A. 1947, § 84-464.

CASE NOTES

Cited: Arkansas Tax Comm'n v. Ashby, 217 Ark. 759, 233 S.W.2d 361 (1950).

26-26-1304. Compensation.

(a) For their services in making any reassessment of property pursuant to the order of the Arkansas Public Service Commission, local assessment officers shall receive no compensation other than the salary or fees allowed by law for making the original assessment; but when the person making any reassessment does not officially serve the county, or district or subdivision thereof, compensation for which service is elsewhere provided, then each person so employed shall receive five dollars (\$5.00) per day for each day's services.

(b) Claims for services shall be presented, audited, and paid as are other claims against the county.

History. Acts 1927, No. 129, § 30; Pope's Dig., § 2056; A.S.A. 1947, § 84-465.

A.C.R.C. Notes. The authority of the Arkansas Public Service Commission with respect to the equalization and assess-

ment of property and the administration of tax laws, except with respect to public utilities and carriers, was transferred to the Assessment Coordination Department by Acts 1997, No. 436. See §§ 25-28-102 and 25-28-103.

26-26-1305. Effect of reassessment.

Any reassessment shall, when completed, be treated exactly as an original assessment and be subject to equalization by the county equalization board and to appeals from the action of any officer having to do with the reassessment as are provided by law in the case of original assessments.

History. Acts 1927, No. 129, § 29; Pope's Dig., § 2055; A.S.A. 1947, § 84-464.

CASE NOTES

Cited: Arkansas Tax Comm'n v. Ashby, 217 Ark. 759, 233 S.W.2d 361 (1950).

26-26-1306. Liability for expenses.

The expense of any reassessment shall be borne by the county in which is situated the district or districts so reassessed.

History. Acts 1927, No. 129, § 29; Pope's Dig., § 2055; A.S.A. 1947, § 84-464.

CASE NOTES

Cited: Arkansas Tax Comm'n v. Ashby, 217 Ark. 759, 233 S.W.2d 361 (1950).

26-26-1307. Notice of reappraisal.

(a)(1) Prior to any countywide reappraisal of property for ad valorem tax purposes, the county assessor or the county assessor's employees or agents shall notify the property owners of the county assessor's intent to reappraise at least forty-five (45) calendar days prior to the reappraisal.

(2) Prior to any reappraisal of an individual's property for ad valorem tax purposes other than a countywide reappraisal under subdivision (a)(1) of this section, the county assessor or the county assessor's employees or agents shall give the property owner reasonable notice of the county assessor's intent to reappraise the property owner's property.

(3) The notice required by this section may be accomplished by publication in newspapers, by radio, by television, by direct mail, or by any other reasonable means.

(b)(1) If a reappraisal under subsection (a) of this section results in an increase in the assessed value of the property, the county assessor shall note in writing on the assessment records the:

(A) Justification for the increase;

(B) Date the property was inspected; and

(C) Details of the inspection.

(2) The records of the appraisal shall be public records subject to inspection under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(c) Any property owner whose property is reappraised under this section may appeal to the county equalization board, and the county equalization board is required to grant an adequate hearing on the appeal.

History. Acts 1999, No. 416, § 1.

26-26-1308. Limitations on reappraisals.

(a) Property shall not be reappraised for ad valorem tax purposes more than one (1) time every five (5) years unless the reappraisal is the result of a countywide reappraisal.

(b) In the event that there is a countywide reappraisal of property for ad valorem tax purposes in any county, taxes shall not be assessed on the basis of the reappraised value of any property in the county until all taxable property in the county has been reappraised.

(c) When a countywide reappraisal of property is completed in any county and taxes are first assessed on the newly reappraised values, the provisions of Arkansas Constitution, Amendment 59, and, § 26-26-401 et seq. relative to the adjustment or rollback of millage levied for ad valorem tax purposes shall be applicable.

(d) Newly discovered real property, new construction and improvements to real property, and personal property shall be listed, appraised, and assessed as otherwise provided by law until the countywide reappraisal of property is completed.

History. Acts 1999, No. 1444, § 1.

Publisher's Notes. Amendment 59, referred to in this section, repealed Ark. Const., Art. 16, § 5,

and substituted a new section therefor which appears as Ark. Const., Art. 16, § 5, in the text of the Constitution. The amendment also added Ark. Const., Art.

16, §§ 14-16, which appear in the text of the Constitution.

Cross References. Determination of millage rollback, § 26-26-1121.

Procedure for adjustment of taxes after reappraisal or reassessment of property, Ark. Const., Art. 16, § 14.

SUBCHAPTER 14 — TANGIBLE PERSONAL PROPERTY

SECTION.

- 26-26-1401. Purpose.
- 26-26-1402. Applicability.
- 26-26-1403. Effective date.
- 26-26-1404. Provisions supplemental.
- 26-26-1405. Rights and responsibilities not limited.

SECTION.

- 26-26-1406. Penalties.
- 26-26-1407. Procedure and forms.
- 26-26-1408. Time for assessment and payment.
- 26-26-1409, 26-26-1410. [Repealed.]

Effective Dates. Acts 2009, No. 277, § 2: July 31, 2009. Effective date clause provided: "Effective Date. This act is effective for the assessment year 2010 and thereafter."

RESEARCH REFERENCES

Am. Jur. 71 Am. Jur. 2d, State Tax., § 655 et seq.

26-26-1401. Purpose.

(a) It is the purpose and intent of this subchapter to reduce the number of persons avoiding the payment of tangible personal property taxes by moving from one county to another within the state or by moving outside the state between the time of assessing property for taxes and the time of collecting taxes thereon by establishing a system that reduces the time period from the date of assessment to the date of collection.

(b) It is further the intent of this subchapter that, when personal property taxes are paid in advance as provided for in this subchapter, the normal procedures carried out by the various county officials and state officials with respect to property taxes shall continue in effect, and, if it is determined through the normal procedures presently in effect that any person who paid personal property taxes in advance overpaid such taxes, the overpayment will be refunded to the taxpayer, and that, if the advance payment of the tangible personal property taxes by a taxpayer is an underpayment of the tax, the taxpayer will be billed for the additional amount due.

(c) It is further the intent of this subchapter that the taxpayer will be required to furnish proof of payment of tangible personal property taxes as a condition for registering or renewing the registration of any motor vehicle.

History. Acts 1981, No. 927, § 1; A.S.A. 1947, § 84-494; Acts 1987, No. 621, § 1.

26-26-1402. Applicability.

The provisions of this subchapter shall not be applicable to taxpayers whose property is subject to assessment by the Tax Division of the Arkansas Public Service Commission.

History. Acts 1981, No. 927, § 9; A.S.A. 1947, § 84-494.8.

Cross References. Tax Division created, § 26-24-101.

26-26-1403. Effective date.

The provisions of this subchapter shall be effective beginning with the year in which the statewide reappraisal of taxable property as ordered in Arkansas Public Service Commission et al. v. Pulaski County

Board of Equalization et al., and the roll back or adjustment of millage is completed in all counties in this state, as contemplated in Arkansas Constitution, Amendment 59.

History. Acts 1981, No. 927, § 10; A.S.A. 1947, § 84-494.9.

Publisher's Notes. Arkansas Public Service Commission et al. v. Pulaski County Board of Equalization et al., referred to in this section, is reported in 266 Ark. 64, 582 S.W.2d 942 (1979).

Amendment 59, referred to in this sec-

tion, repealed Ark. Const., Art. 16, § 5, and substituted a new section therefor which appears as Ark. Const., Art. 16, § 5, in the text of the Constitution. The amendment also added Ark. Const., Art. 16, §§ 14-16, which appear in the text of the Constitution.

26-26-1404. Provisions supplemental.

The provisions of this subchapter shall be supplemental to any other laws of this state relating to the assessment and collection of ad valorem taxes on property and shall be deemed to repeal or modify only those laws in direct conflict with it.

History. Acts 1987, No. 621, § 9.

A.C.R.C. Notes. Former § 26-26-1404, containing provisions deemed supplemental, is deemed to be superseded by this

section. The former section was derived from Acts 1981, No. 927, § 11; A.S.A. 1947, § 84-494.10.

26-26-1405. Rights and responsibilities not limited.

(a) Nothing contained in this subchapter shall be construed to limit or restrict the right of a taxpayer to make application to the equalization board for adjustment of the tangible personal property assessment or the right of the taxpayer to obtain judicial review of the final determination of the board.

(b) Nothing contained in this subchapter shall be construed to limit or restrict or alter the authority and responsibility of any county official, the county equalization board, the county court, or any other agency or person having responsibility with respect to the assessment and collection of ad valorem taxes on tangible personal property.

History. Acts 1981, No. 927, § 8; A.S.A. 1947, § 84-494.7.

26-26-1406. Penalties.

(a) A penalty of ten percent (10%) of the taxpayer's total tangible personal property taxes shall be imposed on any taxpayer who fails or refuses to assess his or her tangible personal property on or before May 31 of each year.

(b) A penalty of ten percent (10%) of the taxpayer's total tangible personal property taxes shall be assessed if the taxpayer fails or refuses to pay tangible personal property taxes on or before October 15 next following the assessment of the tangible personal property for taxes.

History. Acts 1981, No. 927, § 5; A.S.A. 1947, § 84-494.4; Acts 2011, No. 175, § 8.

Amendments. The 2011 amendment, in (a), inserted “or her” and substituted

“May 31” for “April 10”; and, in (b), substituted “October 15” for “October 10” and inserted “tangible personal.”

26-26-1407. Procedure and forms.

The Assessment Coordination Department shall prescribe the forms to be used for the assessment and collection of tangible personal property pursuant to the provisions of this subchapter. The Division of Legislative Audit shall assist and guide the various county officials in establishing an appropriate procedure to be followed in assessing and collecting tangible personal property taxes and other matters necessary to effectively and efficiently carry out the purposes of this subchapter.

History. Acts 1981, No. 927, § 7; A.S.A. 1947, § 84-494.6; Acts 1987, No. 621, § 6.

26-26-1408. Time for assessment and payment.

(a)(1) A taxpayer shall annually assess his or her tangible personal property for ad valorem taxes during the period from January 1 through May 31.

(2)(A) Taxable tangible personal property of a new resident and a new business established between January 1 and May 31 and taxable tangible personal property acquired by a resident during the period from January 1 through May 31, except tangible personal property acquired during the period of May 2 through May 31, shall be assessable without delinquency within thirty (30) days following the date of its acquisition.

(B) All taxable tangible personal property assessable during this period shall be assessed according to its market value as of:

(i) January 1 of the year of the assessment; or

(ii) The date of acquisition if the tangible personal property was acquired during the period of January 2 through May 31 of the year of assessment.

(3) The ten percent (10%) penalty for delinquent assessment shall not apply to tangible personal property becoming eligible for assessment through May 31 if the tangible personal property is assessed on or before May 31, except that the tangible personal property acquired during the period of May 2 through May 31 shall be assessable without penalty within thirty (30) days following the date of its acquisition.

(4)(A) Taxable tangible personal property of a person moving his or her residence from Arkansas, and taxable tangible personal property disposed of by a resident and a business, during the period between January 1 and May 31, if assessed for that year, shall be removed from the assessment rolls, and, if not assessed, shall not be deemed assessable for that year.

(B) Before removal of the tangible personal property from the assessment rolls, it shall be the responsibility of the property owner

to provide the county assessor with notification, and, upon request from the county assessor, proof of the disposal.

(5) The tangible personal property referred to in subdivisions (a)(1)-(4) of this section shall not include the inventory of a commercial establishment because specific provisions for the assessment of the inventory of a commercial establishment is provided elsewhere in this Arkansas Code.

(6)(A) The county assessor may list, value, and assess tangible personal property for a period extending through July 31 of each year of assessment.

(B) Assessment of tangible personal property after July 31 shall be according to provision of existing law.

(b) Personal property taxes are payable each year between the first business day in March and October 15 inclusive.

History. Acts 1981, No. 927, § 2; A.S.A. 1947, § 84-494.1; Acts 1987, No. 621, §§ 2, 4; 1988 (3rd Ex. Sess.), No. 35, § 1; 1991, No. 860, § 2; 1995, No. 754, § 1; 1999, No. 1292, § 1; 2007, No. 827, § 204; 2009, No. 277, § 1; 2011, No. 175, § 9.

A.C.R.C. Notes. For sections dealing with the assessment and valuation of the inventory of a commercial establishment, see § 26-26-1201 et seq. See also § 26-26-

1102.

Amendments. The 2009 amendment inserted (a)(2)(B)(ii), redesignated the remainder of (a)(2)(B), and made related and minor stylistic changes.

The 2011 amendment substituted "each year between the first business day in March and October 15 inclusive" for "from the third Monday in February through October 10 each year" in (b).

26-26-1409, 26-26-1410. [Repealed.]

Publisher's Notes. These sections, concerning the original and copies of tax assessments and payment of same, were repealed by Acts 1991, No. 860, § 3. They were derived from the following sources:

26-26-1409. Acts 1981, No. 927, § 6; A.S.A. 1947, § 84-494.5.

26-26-1410. Acts 1981, No. 927, § 4; A.S.A. 1947, § 84-494.3.

Subdivision (a)(2) of former § 26-26-1409 was also repealed by Acts 1991, No. 291, § 2.

SUBCHAPTER 15 — CORPORATIONS AND FINANCIAL INSTITUTIONS

SECTION.

26-26-1501. Purpose and intent.

26-26-1502. Definitions.

26-26-1503. Personal property.

SECTION.

26-26-1504. Real property.

26-26-1505. Statement of capital stock.

Cross References. State ad valorem tax prohibited, Ark. Const. Amend. No. 47.

Preambles. Acts 1887, No. 13 contained a preamble which read: "Whereas, 1st. Lands have been sold to the State under proceedings purporting to have been had in the courts of this State by virtue of an Act of the General Assembly

thereof entitled 'An Act to Enforce the Payment of Overdue Taxes,' approved March 12, 1881, when the taxes for the alleged nonpayment of which such lands were so sold under said proceedings and decrees of said courts, had been in fact paid prior to any such sales, proceedings or decrees of said courts; and,

"Whereas, 2d. Also the lands of many

other persons were under like proceedings and decrees aforesaid had, by virtue of said act, sold to the State, where the owners thereof had paid taxes which they supposed were on such lands of their own, but which taxes so paid, owing to an erroneous description in the numbers of the same afterwards were ascertained to be on other lands than their own, and their lands sold to the State as aforesaid; and,

"Whereas, 3d. Said overdue tax act was a novel proceeding in this State that was productive of hardships in other respects, and it is but just to them that the owners of land at the time of such sale to the State, should have a limited time to redeem the same therefrom, without loss to the State, provided said lands shall not have been sold by the State prior to any such application to redeem;

"Now, therefore...."

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

Acts 1887, No. 92, § 58: effective on passage.

Acts 1907, No. 451, § 3: effective on passage.

Acts 1929, No. 74, § 4: approved Mar. 2, 1929. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this act shall take effect and be in force from and after its passage."

Acts 1943, No. 89, § 5: Feb. 19, 1943. Emergency clause provided: "It is hereby ascertained and declared that by reason of the enactment of Section 5 of Act 129 of the Acts of 1941 the General Assembly inadvertently elected to tax the dividends derived from shares in national banking associations instead of an ad valorem tax upon the shares of said associations, and thereby repealed by implication Section 13743 of Pope's Digest in so far as it applied to national banking associations,

and in so doing caused a disproportionate burden of taxation as to state banks and trust companies and a loss of revenues to the state and its subdivisions and also caused confusion to arise as to the method of taxing national banking associations and state banks and trust companies. Therefore, it now becomes necessary for the General Assembly to elect the method of taxing national banking associations and state banks and trust companies, and in order that the method of assessing such associations, banks and trust companies for ad valorem taxes may be made definite, and provision for the collection thereof made, and in order that said associations, banks and trust companies may be assessed for the year 1943 and national banking associations assessed for the year 1942, as herein provided, and for the immediate preservation of the public peace, health and safety, an emergency is declared to exist and this Act reviving Section 13743 of Pope's Digest as to such associations, banks and trust companies shall be in force and effect from and after its passage and approval."

Acts 1973, No. 182, §§ 9, 10: Jan. 1, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law relative to the taxation of banks and savings and loan associations is somewhat vague and indefinite, that such institutions should pay the same taxes as other business corporations in the State, and this Act is immediately necessary to clarify the laws with respect to the taxation of financial institutions and to assure that such institutions pay the same taxes as other business corporations. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval." Approved February 22, 1973.

RESEARCH REFERENCES

Am. Jur. 71 Am. Jur. 2d, State Tax., § 428 et seq.

C.J.S. 84 C.J.S., Tax., § 126 et seq.

26-26-1501. Purpose and intent.

(a) It is the purpose of this subchapter to clarify the law relating to the taxation of state and national banks, savings and loan associations, building and loan associations chartered under state and federal law and to simplify and to broaden the tax base applicable to these financial institutions.

(b) It is the intent of this subchapter to repeal the capital stock tax and, in lieu thereof, to tax state and national banks, savings and loan associations, and building and loan associations under existing tax laws generally applicable to business corporations.

History. Acts 1973, No. 182, § 1; A.S.A. 1947, § 84-1937n.

26-26-1502. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Business corporation" means a corporation incorporated under the Arkansas Business Corporation Act, § 4-27-101 et seq.

(2) "Financial institution" means a state bank or national bank, a savings and loan association, or a building and loan association as defined in subdivisions (3)-(5) of this section;

(3) "National bank" means a bank chartered under the banking laws of the United States;

(4) "Savings and loan association" or "building and loan association" means any financial institution or association established and operating under the authority of § 23-37-101 et seq., or § 23-37-706 and § 23-38-201 et seq., or under any other appropriate state or federal law; and

(5) "State bank" means a bank, trust company, or savings bank chartered under the banking laws of this state.

History. Acts 1973, No. 182, § 2; A.S.A. 1947, § 84-2087.

26-26-1503. Personal property.

For purposes of the ad valorem personal property tax, financial institutions shall assess and be taxed upon their personal property the same as other owners of personal property, except as may be prohibited by federal law.

History. Acts 1973, No. 182, § 5; A.S.A. 1947, § 84-487.

26-26-1504. Real property.

(a) Financial institutions shall be subject to the ad valorem real property tax levied pursuant to the authority granted in the laws of this state, to the same extent as other owners of real property in this state.

(b) The assessment of taxes upon the real property of national banking associations and state banks and trust companies shall be had and done in the manner provided by law for the assessment of all other real property by whomsoever owned.

History. Acts 1943, No. 89, § 1; 1973, No. 182, § 6; A.S.A. 1947, §§ 84-505, 84-1937.

26-26-1505. Statement of capital stock.

(a) Bridge, savings banks, mutual loan, building, transportation, construction, and all other companies, corporations, or associations incorporated under the laws of this state, or under the laws of any other state, and doing business in this state, other than the companies, corporations, or associations whose taxation is specifically provided for in this subchapter, shall, through their president, secretary, principal accounting officer, or agent, annually, during the month of July, make out and deliver to the county assessor of the county where the company or corporation is located or doing business a sworn statement of the capital stock setting forth particularly:

- (1) The name and the location of the company or association;
- (2) The amount of capital stock authorized, and the number of shares into which the capital stock is divided;
- (3) The amount of capital stock paid up, its market value, and, if no market value, then the actual value of the shares of stock;
- (4) The total amount of all the indebtedness, except the indebtedness for current expenses, excluding from the indebtedness the amount paid for the purchase or improvement of the property; and
- (5) True valuation of all tangible property belonging to the company or corporation. The schedule shall be made in conformity to instructions and forms as may be prescribed by the Auditor of State and shall also show in what county the property is situated.

(b) Corporations doing business in this state engaged exclusively in the manufacture of cotton or fiber goods or yards, which is commonly called the textile manufacturing business, having mills located in this state, and other corporations to the extent of their assets invested in textile mills located in this state, shall not be required to comply with the provisions of this section for a period of seven (7) years after the location of its textile mills in this state.

(c)(1) The county assessor shall, annually, at least by June 20, deliver to the president, secretary, accounting officer, or agent of any such company, corporation, or association located in or doing business in the county a notice in writing to return the schedule by July 31 next ensuing.

(2)(A) Any president, secretary, principal accounting officer, or agent of any companies or corporations, upon whom notice shall have been served, willfully neglecting or refusing to make the return by July 31 next ensuing after the delivery of the notice, shall be guilty of a

misdeemeanor and, upon conviction, shall be fined in any sum not exceeding one hundred dollars (\$100) or imprisoned not exceeding three (3) months, or both.

(B) The county assessor shall, from the best information he or she can obtain, make out and enter upon the proper assessment roll a list, with the valuation of all tangible and intangible property belonging to a defaulting company or corporation subject to taxation by the provisions of this section, with fifty percent (50%) penalty.

History. Acts 1883, No. 114, §§ 42, 43, p. 199; 1887, No. 92, §§ 17, 18, p. 143; 1907, No. 451, § 1, p. 1225; C. & M. Dig., §§ 9961, 9963; Acts 1929, No. 74, § 1; Pope's Dig., §§ 13741, 13742; A.S.A. 1947, §§ 84-501, 84-502.

A.C.R.C. Notes. Pursuant to Arkansas Constitution, Amendment 57, and § 26-3-302, intangible personal property is exempt from ad valorem taxes.

CASE NOTES

ANALYSIS

Capital Stock.

Located or Doing Business.

Valuation of Property.

Capital Stock.

As used in this section, "capital stock" means the aggregate value of the corporation's stock in the hands of its stockholders, and not the capital of the corporation as represented by its tangible assets, although the value of the shares of capital stock does not constitute the limit of taxation; and as the shares of stock in the hands of the stockholders and the property of the corporation do not contain the same elements of value, a tax on the capital stock of the corporation, in addition to the tangible property thereof, does not constitute double taxation and is valid. *State ex rel. Davis v. Bodcaw Lumber Co.*, 128 Ark. 505, 194 S.W. 692 (1917).

In returning capital stock for taxation, corporations cannot deduct investments of surplus in shares of stock of other corporations. *State ex rel. Attorney Gen. v. Ft. Smith Lumber Co.*, 131 Ark. 40, 198 S.W. 702 (1917); *Ft. Smith Lumber Co. v. State ex rel. Attorney Gen.*, 138 Ark. 581, 211 S.W. 662 (1919), *aff'd*, 251 U.S. 532, 40 S. Ct. 304 (1920).

In assessing the value of the capital stock of a corporation, it is proper to include lands belonging to the corporation situated in another state. *Crossett Lumber Co. v. State*, 139 Ark. 397, 214 S.W. 43 (1919).

Taxable value of shares of stock of a corporation is ascertained by deducting the value of its tangible property otherwise assessed from the market value of the shares of stock. *State v. Eagle Lumber Co.*, 149 Ark. 6, 231 S.W. 180 (1921).

Located or Doing Business.

A foreign corporation is to be assessed for its personal property only in the county where it is doing business. *McDaniel v. Texarkana Cooperage & Mfg. Co.*, 94 Ark. 235, 126 S.W. 727 (1910).

The effect of the 1907 amendment was to make the personal property of a corporation taxable in the county where the property is located. *Beal-Doyle Dry Goods Co. v. Beller*, 105 Ark. 370, 150 S.W. 1033 (1912).

Where corporation has part of its property within a city and part outside the city in the same county, all the tangible personal property of the corporation within the county is to be assessed at the place of the corporation's domicile. *Arkadelphia Milling Co. v. Board of Equalization*, 126 Ark. 611, 191 S.W. 410 (1916).

Valuation of Property.

Valuation of the property of a natural gas company could not be fixed by ascertaining the net earnings of the company and then fixing an amount as the valuation which would produce the net earnings at the rate of six percent per annum. The net income of the company could be taken into consideration as affecting its value, but the probable producing life of

the gas wells, the increased cost of developing them, and the percent of the capitalization of the concern included in the

net income should have also been considered. *Martineau v. Clear Creek Oil & Gas Co.*, 141 Ark. 596, 217 S.W. 807 (1920).

SUBCHAPTER 16 — UTILITIES AND CARRIERS GENERALLY

SECTION.

- 26-26-1601. Applicability.
- 26-26-1602. Report of property subject to assessment.
- 26-26-1603. Information to be furnished.
- 26-26-1604. Delinquency in filing statement.
- 26-26-1605. Annual assessment meeting.
- 26-26-1606. Determination of assessment.
- 26-26-1607. Method of valuing property.
- 26-26-1608. Assessment when no report or erroneous report filed.
- 26-26-1609. Hearing prior to assessment.

SECTION.

- 26-26-1610. Notice of assessment — Review and refunds.
- 26-26-1611. Assignment or apportionment of assessed value.
- 26-26-1612. Recording and certification of valuation.
- 26-26-1613. Property not used in utility operation.
- 26-26-1614. Levy and collection of taxes.
- 26-26-1615. Average tax rate.
- 26-26-1616. Disposition of taxes and penalties.

Effective Dates. Acts 1927, No. 129, § 38: approved Mar. 9, 1927. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage."

Acts 1939, No. 119, § 5: approved Feb. 22, 1939. Emergency clause provided: "Whereas, the large increase in the number of bus and/or truck line companies now subject to ad valorem taxation under the provisions of said Act 129 of 1927, as amended by Act 12 of 1933, make the extension, collection and distribution of taxes therefrom a most difficult, long drawn out, and expensive task, as now by law provided, and this act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage."

Acts 1953, No. 168, § 3: approved Mar. 2, 1953. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that doubt exists as to the legality of the method heretofore used in distributing the taxes identified in this Act, and that the language contained in Section 2 hereof removes all such doubts, thereby assuring the respective taxing units that all such taxes will be

available for carrying on the necessary functions of government. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage."

Acts 1961, No. 129, § 12: approved Feb. 22, 1961. Emergency clause provided: "Since the wording of the present statutes relating to the assessment, certification, and appeals from the assessment as determined and fixed by the Tax Division is somewhat confusing, and since this confusion adversely affects the administration of the assessments fixed by the Tax Division, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in force from and after its passage."

Acts 1963, No. 215, § 3: Mar. 8, 1963. Emergency clause provided: "The General Assembly finds that the Tax Division of the Arkansas Public Service Commission is now in the process of fixing the values and assessing the property of companies within its jurisdiction and that presently inequities are obvious in the methods available under existing statutes, and that it is necessary to avoid any delay or discrimination that an emergency be declared and it is hereby found to exist, and this act being, therefore, necessary for the

immediate preservation of the public peace, health and safety, and the assessment of certain properties without discrimination, an emergency is declared to exist and this act shall become effective immediately upon its passage and approval."

Acts 1980 (2nd Ex. Sess.), No. 3, § 3: May 8, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of rulings by the Public Service Commission and the Transportation Commission with respect to assessments made by the Tax Division of the Public Service Commission of properties assessed by said Tax Division, the Tax Division of the Public Service Commission will be unable to complete within the time now fixed by law its 1980 final recalculations of assessed value of properties owned or operated by the respective public utilities and carriers within the several counties of the State, and that an additional sixty (60) days will be necessary to enable the Tax Division to complete its work and certify such assessed value to the proper officials of the respective counties, and that the immediate passage of this Act is necessary to accomplish said purpose and to prevent undue delay in the proper administration of the tax laws of this State. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health, and welfare, shall be in full force and effect from and after its passage and approval."

Acts 1980 (2nd Ex. Sess.), No. 9, § 3: May 8, 1980. Emergency clause provided: "It is hereby found and determined by the

General Assembly that the method utilized by the Tax Division of the Public Service Commission to value utility property for purposes of ad valorem taxation is not now adequately outlined by statute; that a recent Public Service Commission order indicated a change in the traditional method of valuation of the utility property resulting in a substantial decrease in the assessed value of such utility property which in turn will result in a substantial reduction in tax revenues available to schools and local governments; and that this Act is immediately necessary to delineate the method of valuing utility property by the Tax Division of the Public Service Commission. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1980 (2nd Ex. Sess.), No. 10, § 3: May 8, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law pertaining to the assessment by the Tax Division of the Public Service Commission of property used and/or held for use in the operation of utilities and carriers is vague; that it is immediately necessary to clarify such law to provide for an equitable assessment of such property used and/or held for use by utilities and carriers; and that this Act is immediately necessary to make such clarification. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 71 *Am. Jur. 2d*, *State Tax.*, §§ 392-427, 438-442.

C.J.S. 84 *C.J.S.*, *Tax.*, §§ 156, 159-161, 171-184.

26-26-1601. Applicability.

For the purpose of assessment and taxation, any person, firm, company, copartnership, cooperative, association, or corporation, wherever organized or incorporated, engaged in the business of:

(1) Transmitting natural gas or oil through pipelines, within, into, from, or through this state, or owning or having control of pipelines for

those purposes, except integrated utility companies, shall be deemed to be a pipeline company;

(2) Operating within, into, from, or through this state, a railroad, authorized by the laws of this state, shall be deemed to be a railroad company;

(3) Operating within, into, from, or between cities, towns, and villages of this state, a street, suburban, or interurban railway, whether cars used are propelled by electricity or other motor power, shall be deemed to be a street, suburban, or interurban railway;

(4) Conveying within, into, from, or through this state or any part thereof, money, merchandise, or effects of any kind by express or contracts with any railroad or steamboat company, or the managers, lessees, agents, or receivers thereof, not including railroads or steamboats engaged in the ordinary transportation of merchandise or property in this state, shall be deemed to be an express company;

(5) Operating within, into, from, or through this state, sleeping cars, dining cars, palace cars, or parlor cars, shall be deemed to be a sleeping car company;

(6) Intercounty transporting for hire within, into, from, or through this state, passengers and property by motor vehicle over the public highways of this state, except taxicab companies, shall be deemed to be an intercounty bus line company;

(7) Intercounty transporting for hire within, into, from, through, or across this state, property by motor vehicle over the public highways of this state, or transporting for hire by motor vehicle property over the public highways of this state, though neither loading nor unloading the property within the State of Arkansas, shall be deemed to be an intercounty motor freight carrier company;

(8) Transporting for hire within, into, from, through, or over this state, by regulated airlines passengers or property, shall be deemed to be an airline company;

(9) Permitting passage or of conducting or transporting passengers or property across any waterway within this state by means of a bridge, boat, or other watercraft for which a toll or fee is charged, shall be deemed to be a ferry or a toll bridge company;

(10) Transporting for hire property by boat, barge, or other watercraft over any waterway whether natural or artificial, within this state, shall be deemed to be a water transportation company;

(11) Permitting passage over or of conducting or transporting passengers or property over any road in this state for the use of which a toll is taken, shall be deemed to be a toll road company;

(12) Transmitting within, into, from, or through this state, telegraphic messages, shall be deemed to be a telegraph company;

(13) Transmitting for hire within, into, from, or through this state, telephonic messages, shall be deemed to be a telephone company;

(14) Generating, conducting, or distributing electric power within, into, from, or through this state, for the purpose of supplying to utilities for resale or to the public electricity for light, heat, or power purposes, shall be deemed to be an electric power company;

(15) Conducting or distributing artificial or natural gas within, into, from, or through this state, pipe or tubing for resale to the public for light, heat, or power purposes, shall be deemed to be a gas company; and

(16) Conducting or distributing water within, into, from, or through this state, through pipe or tubing to the public, shall be deemed to be a water company.

History. Acts 1927, No. 129, § 13; § 2; 1963, No. 131, § 1; A.S.A. 1947, § 84-Pope's Dig., § 2039; Acts 1961, No. 129, 602.

26-26-1602. Report of property subject to assessment.

(a) For purposes of this subchapter, property is used or held for use in the operation of a company as such if it is owned or controlled by a utility or carrier and is being utilized, is capable of utilization, in the operation of a utility or carrier, or is being constructed for future utilization in the utility or carrier operation. However, leased property controlled by a utility or carrier shall not be assessed by a county assessor in this state if the property is assessed for ad valorem tax purposes by the Tax Division of the Arkansas Public Service Commission.

(b)(1) All property, both real and personal, used or held for use in the operation of the company as such, of carriers, by pipeline, railroads, street railway, express, sleeping car, intercounty bus lines, intercounty motor freight, airline, ferry, interurban, toll bridge, toll road, or water transportation, and by similar carriers, and all telegraph, telephone, electric power, gas, water, and other similar companies shall be assessed for ad valorem taxation by the division.

(2) Each such company doing business or authorized to do business in Arkansas and owning or having control of property, or owning or having control of property in Arkansas, shall, through its owner, president, secretary, general manager, or agent having control of the company's affairs in this state, on or before March 1 of each year, make a statement in writing to the division showing all property subject to assessment and taxation in this state. The statement shall truly show the amount, kind, and value of the property as of January 1 next preceding the filing of the annual statement. However, in the case of motor carriers, the statement and information shall be filed annually with the division on or before March 31.

History. Acts 1927, No. 129, § 14; § 1; 1963, No. 131, § 2; 1980 (2nd Ex. Pope's Dig., § 2040; Acts 1961, No. 129, Sess.), No. 10, § 1; A.S.A. 1947, § 84-601.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey of Arkansas Law, Taxation, 1 U. Ark. Little Rock L.J. 258.

CASE NOTES

ANALYSIS

Constitutionality.
Ad Valorem Tax.
Assessment Date.
Electric Companies.
Railroads.
Statement.

Constitutionality.

Tax authorized by this section is not violative of U.S. Const. Art. I, § 8, the commerce clause, or U.S. Const., Amend. 14, when applied to equipment engaged in hauling into and through the state in interstate commerce, since only an ad valorem tax on property found within the state is involved. *Arco Auto Carriers, Inc. v. State*, 232 Ark. 779, 341 S.W.2d 15 (1960), dismissed, *Bolton v. Schuykill Haven*, 365 U.S. 767, 81 S. Ct. 912, 6 L. Ed. 2d 189 (1961), dismissed, *Arco Auto Carriers, Inc. v. Arkansas*, 365 U.S. 770, 81 S. Ct. 912 (1961).

There is nothing in the Constitution of the United States or its laws that prevents a state from taxing personal property employed in interstate or foreign commerce like other personal property within its jurisdiction. *Arco Auto Carriers, Inc. v. State*, 232 Ark. 779, 341 S.W.2d 15 (1960), dismissed, *Bolton v. Schuykill Haven*, 365 U.S. 767, 81 S. Ct. 912, 6 L. Ed. 2d 189 (1961), dismissed, *Arco Auto Carriers, Inc. v. Arkansas*, 365 U.S. 770, 81 S. Ct. 912 (1961).

Tax authorized by this section is a county ad valorem tax administered by a state agency for purpose of efficiency and, as such, is not violative of Ark. Const., Art. 2, § 23 or Ark. Const. Amend. 47. *Arco Auto Carriers, Inc. v. State*, 232 Ark. 779, 341 S.W.2d 15 (1960), dismissed, *Bolton v. Schuykill Haven*, 365 U.S. 767, 81 S. Ct. 912, 6 L. Ed. 2d 189 (1961), dismissed, *Arco Auto Carriers, Inc. v. Arkansas*, 365 U.S. 770, 81 S. Ct. 912 (1961).

Ad Valorem Tax.

An ad valorem tax is on property that may be found in the state; it is immaterial that the property may not be moved on any regular route or schedule. *Arco Auto*

Carriers, Inc. v. State, 232 Ark. 779, 341 S.W.2d 15 (1960), dismissed, *Bolton v. Schuykill Haven*, 365 U.S. 767, 81 S. Ct. 912, 6 L. Ed. 2d 189 (1961), dismissed, *Arco Auto Carriers, Inc. v. Arkansas*, 365 U.S. 770, 81 S. Ct. 912 (1961).

Assessment Date.

Pursuant to subsection (b)(2), a determination of assessed value is to be made as of January 1 of each year. *Ozark Gas Pipeline Corp. v. Arkansas Pub. Serv. Comm'n*, 342 Ark. 591, 29 S.W.3d 730 (2000).

Electric Companies.

An electric cooperative's plants were assessable property pursuant to this section where: (1) the plants were included in the cooperative's rate base at their net book value and, as a consequence, the cooperative was recovering in authorized rates all of the expenses associated with the plants prior to their being placed in cold standby status, as well as the ad valorem taxes associated with the plants; (2) the plants remained capable of generating electricity subject to the management decisions of the cooperative; and (3) the cooperative continued to voluntarily maintain these plants as assets. *Arkansas Elec. Coop. Corp. v. Arkansas Pub. Serv. Comm'n*, 307 Ark. 171, 818 S.W.2d 935 (1991).

Railroads.

A tram or log road on private property and not operated as a public carrier, though extended for 12 miles, was not a "railroad" within Acts 1911, No. 251 and was not assessable as a railroad. *State v. Mississippi, A. & W. Ry.*, 138 Ark. 483, 212 S.W. 317 (1919) (decision under prior law).

Statement.

The statement required of a railroad by this section should show the land descriptions constituting the railroad right-of-way. *Corn v. Arkansas Whse. Corp.*, 243 Ark. 130, 419 S.W.2d 316 (1967).

Cited: *Saint Louis-San Francisco Ry. v. Arkansas Pub. Serv. Comm'n*, 227 Ark. 1066, 304 S.W.2d 297 (1957); *Kansas City S. Ry. v. Arkansas Commerce Comm'n*, 230 Ark. 663, 326 S.W.2d 805 (1959).

26-26-1603. Information to be furnished.

(a) Each company, as defined in § 26-26-1601, shall annually on or before March 1, make and deliver to the Tax Division of the Arkansas Public Service Commission, in such form as the division may prescribe, a statement of the proper official, agent, or person of the company, showing in detail the following facts:

- (1) Name of company;
- (2) The status of the company, whether person, firm, company, copartnership, association, or corporation, and under the laws of what state or country organized or incorporated;
- (3) Location of its principal office within or without Arkansas;
- (4) Name and post office address of the owner, president, secretary, general manager, and agent having control of the company's affairs in this state;
- (5) The par value of all outstanding capital stock and funded debt of every kind, the market and, if no market, the actual value on January 1 next preceding;
- (6) The total gross revenues, expenses, net revenues, and net income, separately, from utility operation, nonutility operation, and nonoperating properties, for the next preceding calendar year, both for the State of Arkansas and all states if the company operates in states other than Arkansas, in which latter case Arkansas's stated proportion of the total revenues, expenses, and income must include not only revenues, expenses, and income arising from intrastate business but also the state's due proportion of the revenues, expenses, and income from interstate business;
- (7) The total value of all real and personal property owned or controlled by the company and situated outside of Arkansas on January 1 next preceding showing separately that part used in connection with the daily operations of the company and that part used otherwise, if there is any;
- (8) A detailed statement of all real and personal property owned or controlled by the company and situated in Arkansas on January 1 next preceding, giving the description, location, and value thereof, and showing separately that part used in connection with the daily operations of the company and that part used otherwise, if there is any; and
- (9) Such other and additional information as to ownership, amount, kind, location, operation, and value of property owned or controlled as the division may require.

(b) The official, agent, or person of the company submitting the required statement shall make and sign, on the face of the required statement, the following declaration:

"I declare, under the penalties of perjury, that the foregoing statements are true to the best of my knowledge and belief."

History. Acts 1927, No. 129, § 15;
Pope's Dig., § 2041; A.S.A. 1947, § 84-603; Acts 1997, No. 1002, § 1.

CASE NOTES**Rights-of-Way.**

The report required of a railroad by this section should show the land descriptions constituting the railroad right-of-way. *Corn v. Arkansas Whse. Corp.*, 243 Ark. 130, 419 S.W.2d 316 (1967).

Cited: *Saint Louis-San Francisco Ry. v. Arkansas Pub. Serv. Comm'n*, 227 Ark. 1066, 304 S.W.2d 297 (1957).

26-26-1604. Delinquency in filing statement.

(a)(1) Unless for good cause shown, should any company fail to file on or before March 1 the complete statement required of it by §§ 26-26-1602 and 26-26-1603, the time for making the return shall be extended for not more than sixty (60) days.

(2) The Tax Division of the Arkansas Public Service Commission shall advise the company in writing of the delinquency, and, thereafter, should the company fail to file the statement before May 1, the division shall immediately report the delinquency to the appropriate commission, and should delinquency exist on May 31 of the assessment year, the commission shall certify the delinquency to the Director of the Department of Finance and Administration.

(b)(1) By proper action in the name of the state, the director may recover from any delinquent company a penalty not to exceed one hundred dollars (\$100) for each day's delinquency, beginning as of March 1 of the assessment year.

(2) In the alternative, the director may petition the commission for revocation of the certificate or permit of authority issued to the delinquent company to operate in the State of Arkansas.

History. Acts 1927, No. 129, § 19; § 2; A.S.A. 1947, § 84-607; Acts 2003, No. Pope's Dig., § 2045; Acts 1961, No. 129, 831, § 2.
§ 3; 1983, No. 579, § 2; 1983, No. 602,

26-26-1605. Annual assessment meeting.

(a)(1) The Tax Division of the Arkansas Public Service Commission shall meet the first Monday in March of each year for the purpose of assessing the property which it is required to assess.

(2) Before entering upon the discharge of his or her duties, each commissioner shall subscribe to an oath that he or she will well and truly value and assess the property required to be assessed by the division. The oath shall be recorded at length upon a book used by the division for recording the assessments.

(b) The division shall examine the returns filed of all persons, firms, companies, copartnerships, associations, and corporations required by law to make them and, also, such information as it may have obtained in addition thereto, and shall determine the valuation of the items of property which it is required to value, and shall assess the property at its true and full market or actual value, or such percentage thereof as the division shall have so adopted and ordered.

(c) In valuing the property of persons, firms, companies, copartnerships, associations, and corporations, the division shall take into consideration the value of all the property of the company as a unit, whether all or only a part of it is within this state.

History. Acts 1927, No. 129, § 16; Pope's Dig., § 2042; A.S.A. 1947, § 84-604.

26-26-1606. Determination of assessment.

(a) The returns of the persons, firms, companies, copartnerships, associations, and corporations whose assessment is provided for by this subchapter shall not be held to be conclusive as to the value of the property so returned, but the Tax Division of the Arkansas Public Service Commission may make such assessment of the property as it may deem just and equitable.

(b) The division shall ascertain the value of all property, tangible and intangible, including good will, easements, and franchises, except the right to be a corporation, it being the purpose of this subchapter to include in the valuation every element that adds value to the property.

History. Acts 1927, No. 129, § 17; Pope's Dig., § 2043; A.S.A. 1947, § 84-605.

CASE NOTES

Construction With Other Laws.

Under the principle that a specific statute controls over a general statute, this section and § 26-26-1611, which relate to utilities and which include tangible and intangible property for fixing value, con-

trol over § 26-3-302, which provides that intangible personal property is exempt from all ad valorem tax levies. *Ozark Gas Pipeline Corp. v. Arkansas Pub. Serv. Comm'n*, 342 Ark. 591, 29 S.W.3d 730 (2000).

26-26-1607. Method of valuing property.

(a) The valuation of the taxable property, both real and personal, of all persons, firms, companies, copartnerships, cooperatives, associations, and corporations required by law to be assessed by the Tax Division of the Arkansas Public Service Commission shall be made upon the consideration of what a clear fee simple title thereto would sell for under conditions which usually govern the sale of property of that character.

(b) The division in determining fair market value, insofar as other evidence and information in its possession does not make it appear improper or unjust for it to do so, shall ascertain and determine as nearly as it can and consider:

(1) Original cost less depreciation, replacement cost less depreciation, or reconstruction cost less depreciation. Proper consideration may be made for functional or economic obsolescence and for operation of

nonprofitable facilities which necessitate regulatory body approval to eliminate;

(2)(A) The market value of all outstanding capital stock and funded debt, excluding current and deferred liabilities, except accumulated deferred income taxes, investment tax credits, and items associated therewith. A premium or discount to capital stock may be considered above or below the current market price where evidence warrants.

(B) In cases where the outstanding capital stock is not traded or is not capable of reasonably accurate determination, book values may be substituted;

(3)(A)(i) The utility operating income after deduction of all actual income taxes paid, capitalized in the manner and at such rates as shall be just and reasonable, but in no event shall the capitalization rate be less than six percent (6%). The deduction from income of deferred income taxes, investment tax credits, and items associated therewith is specifically prohibited for purposes of this subsection.

(ii) The utility operating income after the deduction of all income tax expense capitalized in a manner which recognizes the utility's ability to defer income taxes, utilizing accumulated deferred income taxes, investment tax credits, and items associated therewith as cost-free debt in the capital structure to determine the capitalization rate.

(B) The utility operating income to be capitalized should be determined by reference to the company's historical income stream, appropriately weighted, with consideration to the future income stream.

(C) Directory sales revenue produced in this state is considered attributable to utility real and personal property located in this state and is to be appropriately considered in determining operating income;

(4) Such other information as evidence to value as may be obtained that will enable the division to determine the fair market value of the property of the companies. The fair market value of affiliated properties separately assessed and the nonoperating properties of such companies shall be ascertained and determined as nearly as possible and deducted from the total unit value of the properties of the companies if the properties are included in the unit value. Insofar as it is possible or practical to do so, the same method of evaluating the properties of the companies separately assessed, or nonoperating properties, shall be used as was used in determining the unit value of the company.

History. Acts 1927, No. 129, § 18; § 1; 1980 (2nd Ex. Sess.), No. 9, § 1; Pope's Dig., § 2044; Acts 1963, No. 215, A.S.A. 1947, § 84-606.

CASE NOTES

ANALYSIS

Court's Authority.
Railroads.
Stock-and-Debt Method.

Court's Authority.

Because of the separation of powers doctrine, it is not within the province of state courts to assess property, the court can only review the assessments and reverse them and send them back to the executive department when they are clearly erroneous, manifestly excessive, or confiscatory. *Arkansas Elec. Coop. Corp. v. Arkansas Pub. Serv. Comm'n*, 307 Ark. 171, 818 S.W.2d 935 (1991).

Railroads.

The method of using cost value, capitalized earnings value, and stock and debt value is a proper yardstick to use to determine the system value of railroad property. *Saint Louis-San Francisco Ry. v. Arkansas Pub. Serv. Comm'n*, 227 Ark. 1066, 304 S.W.2d 297 (1957).

In case involving proper valuation of property of railroads for ad valorem tax assessment purposes, the formula being

used, being the reconstruction cost new minus depreciation, there was an error in failing to exclude current liabilities, and unadjusted credits from the stock and funded debt method of determining value, as included in the stock and funded debt valuation, were current liabilities and unadjusted credits that were not part of the funded debt, but consisted of such items as "traffic and car service balances" between involved company and other companies, audited wages and accounts payable, and accrued taxes. *Kansas C. S. R. Co. v. Arkansas Commerce Com.*, 230 Ark. 392, 323 S.W.2d 193 (1959), US Supreme Court cert. denied, *Kansas City Southern R. Co. v. Arkansas Commerce Com.*, 361 U.S. 825, 80 S. Ct. 80 (1959).

Stock-and-Debt Method.

The stock-and-debt method was a viable method for determining the value of a natural gas pipeline where the company that owned the pipeline had liabilities for valuation purposes, even though it did not have publicly traded stock. *Ozark Gas Pipeline Corp. v. Arkansas Pub. Serv. Comm'n*, 342 Ark. 591, 29 S.W.3d 730 (2000).

26-26-1608. Assessment when no report or erroneous report filed.

If any person, firm, company, copartnership, association, or corporation whose assessment is provided for in this subchapter shall neglect or refuse to make and file with the Tax Division of the Arkansas Public Service Commission by March 1, the statements and schedules required by this subchapter, or make such report and fails to show or shows erroneously any information called for material to the determination of any fact to be ascertained by the division in connection with the amount, description, location, and value of the property required to be assessed, the division shall inform itself as best it can on the undisclosed facts in order to discharge its duties with respect to the assessment of the property of the company and proceed to assess it.

History. Acts 1927, No. 129, § 20; Pope's Dig., § 2046; A.S.A. 1947, § 84-608.

26-26-1609. Hearing prior to assessment.

At any time after the meeting of the Tax Division of the Arkansas Public Service Commission on the first Monday in March and before the assessment of the property of any company is determined, any company or person interested shall have the right, on written application, to appear before the division and be heard in the matter of the valuation of the property of any company for taxation.

History. Acts 1927, No. 129, § 21; Pope's Dig., § 2047; A.S.A. 1947, § 84-609.

CASE NOTES

Cited: Arco Auto Carriers, Inc. v. State, 232 Ark. 779, 341 S.W.2d 15 (1960).

26-26-1610. Notice of assessment — Review and refunds.

(a) After the Tax Division of the Arkansas Public Service Commission shall have completed the original assessment of any property within its jurisdiction, it shall, as soon as practicable, give notice in writing by first class mail to the owner, officer, agent, or attorney making the statement, or, if no statement has been filed, then the notice is to be forwarded by first class mail to the party or company against which the assessment has been made, showing the total amount of the assessment.

(b)(1) If the owner of the property so assessed is dissatisfied with the assessment made by the division, as approved by the Arkansas Public Service Commission or the Arkansas Transportation Commission [abolished], the owner, within ten (10) days from date of notice, may file with the appropriate commission a written petition for review of the assessment.

(2) All hearings on the petition shall be had before the appropriate commission or its agent on or before November 1 after assessment notice has been given. However, hearings on petitions for review of assessments of bus lines, motor carriers, airlines, water transportation companies, and private car companies, which assessments are certified to the Director of the Department of Finance and Administration for collection of tax, shall be to the appropriate commission or its agent, on or before December 31 of the assessing year.

(c)(1) The company, on an appeal to the Pulaski County Circuit Court from an order or finding of the appropriate commission during the pendency of a final judgment after any appeal, shall pay all taxes due before the date on which penalties are attached based upon the original assessment.

(2) If on or prior to the final date for the payment of taxes without penalty the final judgment of the court shall have been entered, all taxes due shall be based upon the amount of the assessment arising under the final judgment.

(d)(1) In the event any company shall not have paid on or before the final date for payment of taxes without penalty, all taxes due based upon the assessment record on the tax rolls on the final date, then the company shall be required to pay, in addition to these taxes and by reason of the delinquency, all penalties at the time provided by law, together with the costs as shall have accrued.

(2)(A) At the time the payment is made, the company shall, in writing, advise the official to whom payment of taxes, penalties, and costs have been paid that a specified amount thereof is being paid under protest.

(B)(i) Upon receipt of the payment and written protest, the collecting official shall cause the specified amount set forth by the company to be deposited into an Ad Valorem Tax Protest Fund.

(ii) If as a result of any final judgment the company shall be entitled to a refund then the collecting official shall cause a refund, as determined by the final judgment to be made from the fund; and the remaining if any or the whole if no refund is due the company shall be distributed for the benefit of the respective taxing units entitled thereto.

History. Acts 1927, No. 129, § 24; Pope's Dig., § 2050; Acts 1945, No. 289, § 1; 1953, No. 388, § 1; 1961, No. 129, § 6; 1965, No. 425, § 1; A.S.A. 1947, § 84-612; Acts 2009, No. 218, § 3; 2009, No. 951, §§ 1, 4.

A.C.R.C. Notes. This section was amended by Acts 2009, No. 218, § 3. However, Acts 2009, No. 951, §§ 1 and 4, repealed this section as amended by Acts 2009, No. 218, § 3, and reenacted this section as it existed before the amendments by Acts 2009, No. 218, § 3.

The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23 and Acts 1989 (1st Ex. Sess.),

No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the State Highway and Transportation Department, respectively. See § 23-2-201 et seq.

Amendments. The 2009 amendment by No. 218, in (b), inserted (b)(2)(B), redesignated the remaining text of (b)(2) as (b)(2) and (b)(3), and deleted "on or before November 1 after assessment notice has been given" at the end of (b)(2)(A); in (c)(1), inserted "party or", substituted "during the pendency of a petition for review and on appeal" for "on an appeal to the Pulaski County Circuit Court", and substituted "pending" for "during the pendency of a"; and made minor stylistic changes.

CASE NOTES

Challenges to Assessments.

Cable-services provider's suit seeking a tax refund under § 26-35-901 on grounds the Arkansas Public Service Commission wrongly included its intangible personal property in its ad valorem assessments was properly dismissed, as that claim should have been brought before the Commission, which had exclusive authority over such assessments and challenges

thereto under § 26-24-103 and this section. *Comcast of Little Rock v. Bradshaw*, 2011 Ark. 431, — S.W.3d — (2011).

As a cable-services provider's lawsuit did not challenge the validity of the underlying tax, but alleged that the ad valorem assessment was carried out in an illegal fashion due to its property falling within a statutory exemption, its suit did not come within the illegal-exaction pro-

vision of Ark. Const. Art. XVI, § 13. *Comcast of Little Rock v. Bradshaw*, 2011 Ark. 431, — S.W.3d — (2011).

232 Ark. 779, 341 S.W.2d 15 (1960); *Missouri P.R.R. v. Tax Div.*, 504 F. Supp. 907 (E.D. Ark. 1980).

Cited: *Arco Auto Carriers, Inc. v. State*,

26-26-1611. Assignment or apportionment of assessed value.

The Tax Division of the Arkansas Public Service Commission shall assign or apportion the assessed value of the property of all persons, firms, companies, copartnerships, associations, and corporations which it is required to assess in the following manner:

(1) There shall be deducted from the true market or actual value of the entire property, tangible and intangible, ascertained as provided in this subchapter, the true market or actual value as ascertained from the information furnished by report or otherwise of all real and personal property of the company not used in its business as a public utility, and the remainder shall be treated as the true market or actual value of all its property, tangible or intangible, actually used or employed in its public utility business;

(2) The division shall then ascertain and fix the value of the total utility operating property, tangible and intangible, in this state by taking such proportion of the true market or actual value of the entire operating property, tangible or intangible, of the company actually used in its public utility business as its total lines within this state bear to the total lines, both within and without this state, or as its total receipts or income from operation, both within and without this state, or by using such other recognized method or combination of methods as will, in the judgment of the division, result in a just and equitable apportionment to this state of its due proportion of the value of the total utility operating property; and

(3)(A) When the value of the total utility operating property, tangible and intangible, in this state has been determined, or when the property and operations of the company are wholly within this state, there shall be assigned or apportioned to the several counties, towns, school districts, and other taxing districts through or in which the company operates the value of all real estate and all tangible personal property which had a fixed situs therein on January 1 of the current tax year. The remaining part of the assessment, if any, shall be assigned or apportioned among the several taxing districts in proportion to the value of the tangible property assigned or apportioned thereto.

(B)(i) The value assigned to rolling stock of street, suburban, or interurban railroads and railroad companies shall be apportioned among the several counties, towns, and school districts through or in which the company operated in proportion to the mileage operated therein.

(ii) The value of the personal property of any express or sleeping car company shall be apportioned among the several counties, towns, and school districts through or in which the company operated in proportion to the mileage operated therein.

History. Acts 1927, No. 129, § 22; Pope's Dig., § 2048; Acts 1961, No. 129, § 4; A.S.A. 1947, § 84-610.

CASE NOTES

ANALYSIS

Apportionment.

Assignment.

Construction With Other Laws.

Apportionment.

Crossties held for creosoting were for use throughout the system upon completion of the treating process and did not have a fixed situs; therefore, it was proper to apportion the value to the various taxing units. *North Little Rock Special School Dist. v. Koppers Co.*, 211 Ark. 322, 200 S.W.2d 519 (1947).

Assignment.

A railroad bridge across a navigable stream that had been taxed as local property, when acquired by a railroad for its trackage, became a part of the railroad and taxable by the state, and not taxable

as an independent structure by local authorities. *Arkansas Tax Comm'n v. Crittenden County*, 183 Ark. 738, 38 S.W.2d 318 (1931).

Construction With Other Laws.

Under the principle that a specific statute controls over a general statute, this section and § 26-26-1606, which relate to utilities and which include tangible and intangible property for fixing value, control over § 26-3-302, which provides that intangible personal property is exempt from all ad valorem tax levies. *Ozark Gas Pipeline Corp. v. Arkansas Pub. Serv. Comm'n*, 342 Ark. 591, 29 S.W.3d 730 (2000).

Cited: *Saint Louis-San Francisco Ry. v. Arkansas Pub. Serv. Comm'n*, 227 Ark. 1066, 304 S.W.2d 297 (1957); *Arco Auto Carriers, Inc. v. State*, 232 Ark. 779, 341 S.W.2d 15 (1960).

26-26-1612. Recording and certification of valuation.

(a) When the Tax Division of the Arkansas Public Service Commission shall have ascertained the assessed value of the property of any company which it is required to originally assess other than bus lines, motor freight, airlines, water transportation companies, and private car companies, the valuation shall be entered in detail in a record to be kept for that purpose.

(b) On or before July 15 of each year, it shall be the duty of the division to certify out, through its director or secretary, to the proper official of the respective counties in which is located or operated any property which it is required to assess so much of the value of the property as has been assigned or apportioned to each county and the districts and towns thereof.

(c) The official shall enter upon the proper record the assessments certified, and neither the county assessor, the county equalization board, nor the county court has authority to change the assessment so certified, and the taxes shall be extended and collection made on the assessment so certified in like manner as extension and collection is made in case of property locally assessed.

History. Acts 1927, No. 129, § 23; § 2; 1961, No. 129, § 5; 1980 (2nd Ex. Pope's Dig., § 2049; Acts 1953, No. 388, Sess.), No. 3, § 1; A.S.A. 1947, § 84-611.

CASE NOTES

Cited: Saint Louis-San Francisco Ry. v. Carriers, Inc. v. State, 232 Ark. 779, 341 Ark. 1066, 304 S.W.2d 297 (1957); Arco Auto

26-26-1613. Property not used in utility operation.

All real and personal property, not used in the utility operation of the company as such, of any carrier pipeline, railroad, street, interurban or suburban railroad, express, sleeping car or intercounty bus line company and of any telegraph, telephone, electric power, gas, water, water transportation, or toll road or ferry company shall be listed and assessed by the county assessor of the county where the property is located at the same time and in the same manner as property belonging to individuals is by law required to be listed and assessed.

History. Acts 1927, No. 129, § 25; Pope's Dig., § 2051; A.S.A. 1947, § 84-613.

CASE NOTES

Property Used by Utilities.

Where evidence showed that all property subject to taxation was used in utility operation of railroad, it was not to be assessed under this section. State v. Midland Valley R.R., 197 Ark. 243, 122 S.W.2d 173 (1938).

Crossties held for creosoting were ac-

quired for the purpose of maintaining utility operation and were not to be assessed by assessor. North Little Rock Special School Dist. v. Koppers Co., 211 Ark. 322, 200 S.W.2d 519 (1947).

Cited: Saint Louis-San Francisco Ry. v. Arkansas Pub. Serv. Comm'n, 227 Ark. 1066, 304 S.W.2d 297 (1957).

26-26-1614. Levy and collection of taxes.

(a)(1) Having ascertained and fixed the taxable value of the tangible and intangible property used or held for use in the operation of each intercounty bus line, intercounty motor freight, airline, or water transportation company, as required by law, the Tax Division of the Arkansas Public Service Commission shall levy and extend against each valuation the average rate of ad valorem levy prevailing throughout this state for the assessment year, and then ten (10) days before the due date, the division shall certify the tax to the Director of the Department of Finance and Administration for collection.

(2) The director shall immediately forward by first-class mail a notice showing the assessed valuation, applicable rate of levy, the amount of tax charged, and the due date of the tax charged to each company against which a tax has been extended and so certified.

(b)(1) If the taxes are not paid on or before the date on which ad valorem taxes or any part of ad valorem taxes on personal property become delinquent, the director shall add a penalty of ten percent (10%) and mail a statement of the tax and penalty to each person, company, or corporation so delinquent.

(2)(A) If the tax and penalty are not paid on or before the date on which a county collector may collect taxes by distraint, in lieu of the ten percent (10%) penalty, the director shall add to the tax a penalty of twenty-five percent (25%).

(B) The statement of tax and ten percent (10%) penalty from the director shall warn that if the tax and penalty are not paid within the time stated, in lieu of the ten percent (10%) penalty, a penalty of twenty-five percent (25%) will be added.

(c)(1) For the purpose of collecting the taxes and penalties, in addition to the powers vested in the director for the collection of taxes, the director shall have all the powers vested in county collectors for the purpose of collecting delinquent personal property taxes.

(2) The director may petition the Arkansas Public Service Commission for revocation of the certificate or permit of authority issued to the delinquent company to operate in the State of Arkansas.

History. Acts 1939, No. 119, § 1; 1953, 602, § 3; A.S.A. 1947, § 84-614; Acts No. 168, § 1; 1961, No. 129, § 7; 1963, No. 2003, No. 831, § 3. 131, § 3; 1983, No. 579, § 3; 1983, No.

CASE NOTES

Constitutionality.

Ad valorem tax collected under this section is a county tax administered by a state agency and, as such, is not violative of Ark. Const. Amend. 47, prohibiting state ad valorem tax. Arco Auto Carriers,

Inc. v. State, 232 Ark. 779, 341 S.W.2d 15 (1960), dismissed, Bolton v. Schuylkill Haven, 365 U.S. 767, 81 S. Ct. 912, 6 L. Ed. 2d 189 (1961), dismissed, Arco Auto Carriers, Inc. v. Arkansas, 365 U.S. 770, 81 S. Ct. 912 (1961).

26-26-1615. Average tax rate.

The average rate of ad valorem levy throughout this state shall be determined by totaling the millage rate for all purposes for each of the several taxing districts of this state for the assessment year and dividing the total obtained by the number of taxing districts of this state.

History. Acts 1939, No. 119, § 3; A.S.A. 1947, § 84-616.

26-26-1616. Disposition of taxes and penalties.

(a)(1) Except as provided in subsection (c) of this section, all taxes and penalties collected under the provisions of § 26-26-1614 shall be deposited into the State Treasury as trust fund income to the credit of the Ad Valorem Tax Fund.

(2)(A) The Treasurer of State shall annually transmit to the respective county treasurers of the several counties of this state the proportionate part of the Ad Valorem Tax Fund coming from the source that the improved state highway mileage in each county bears to the improved state highway mileage in all counties, the highway

mileage figures to be furnished by the Arkansas State Highway and Transportation Department on request of the Treasurer of State.

(B) The respective county treasurers shall prorate the amount so received among the several county funds, school districts, and municipalities of the county in the same ratio that the taxes received from the millage levy by each bore to the total taxes from the millage levy received by all county funds, school districts, and municipalities, according to the local county collector's settlement for the particular assessment year.

(b)(1) So long as any agency of this state shall have the function or be charged with the duty of making audits of the records and accounts of the officers and employees of counties, municipalities, or school districts or so long as any agency of this state shall have the function or be charged with the duty of assessing the property referred to in this subchapter or so long as any agency of this state shall have the function or be charged with the duty of furnishing guidance, instruction, and assistance to the county assessor in the performance of his or her duties, then the aggregate total amount expended by this state in the performance and carrying out of the functions and duties indicated shall be a proper charge against the taxes and penalties credited to the Ad Valorem Tax Fund under subsection (a) of this section.

(2) It shall be the duty of the Chief Fiscal Officer of the State to annually determine the amount of these costs and to certify to the Treasurer of State the amount that the aggregate of the taxes and penalties exceeds these costs in order that the excess may be transmitted to the respective county treasurers as provided in this section.

(c)(1) The first one hundred thousand dollars (\$100,000) collected in taxes and penalties under § 26-26-1614 during each fiscal year shall be deposited into the State Treasury as nonrevenue receipts credited to the State Central Services Fund for use by the Revenue Division of the Department of Finance and Administration.

(2) No funds collected pursuant to § 26-26-1614 shall be withheld by the state if those funds were collected under the authority of the Arkansas Constitution, Article 14, § 3(b)(1).

History. Acts 1939, No. 119, § 2; 1953, No. 168, § 2; 1965, No. 470, § 3; A.S.A. 1947, § 84-615; Acts 2003, No. 831, §§ 4, 5.

Cross References. Ad Valorem Tax Fund, § 19-5-906.

Constitutional Officers Fund and State Central Services Fund, § 19-5-205.

CASE NOTES

Constitutionality.

Ad valorem tax collected under § 26-26-1614 is a county tax administered by a state agency for the purpose of efficiency and is not a violation of Ark. Const. Amend. 47, prohibiting state ad valorem

tax. *Arco Auto Carriers, Inc. v. State*, 232 Ark. 779, 341 S.W.2d 15 (1960), dismissed, *Bolton v. Schuykill Haven*, 365 U.S. 767, 81 S. Ct. 912, 6 L. Ed. 2d 189 (1961), dismissed, *Arco Auto Carriers, Inc. v. Arkansas*, 365 U.S. 770, 81 S. Ct. 912 (1961).

SUBCHAPTER 17 — PRIVATE CAR COMPANIES

SECTION.

- 26-26-1701. Definition.
 26-26-1702. Report required.
 26-26-1703. Report by railroads of private car mileage.
 26-26-1704. Failure to make statements.

SECTION.

- 26-26-1705. Valuation and assessment.
 26-26-1706. Levy of tax, collection, and penalty for delinquency.
 26-26-1707. Disposition of taxes and penalties.

Effective Dates. Acts 1915, No. 224, § 9: approved Mar. 23, 1915. Emergency declared.

Acts 1923, No. 560, § 8: effective on passage.

Acts 1953, No. 167, § 10: approved Mar. 2, 1953. Emergency clause provided: "It is the sense of this body that the provisions of this Act will provide for more efficient administration in the assessment and collection of ad valorem taxes on private car

companies, and a more equitable distribution of such taxes; and that undue delay in the effective date hereof will preclude such efficiency and equity of administration and distribution for the year 1953. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in force from and after its passage."

26-26-1701. Definition.

As used in this subchapter, unless the context otherwise requires, "private car company" means every person, company, or corporation other than a railroad company, engaged in the business of operating cars or engaged in the business of furnishing or leasing cars for the transportation of freight, property, or persons, whether or not the cars are owned by the person, company, or corporation, over any railway lines, in whole or in part within this state, whether the cars are termed box, coal, flat, furniture, gondola, ore, refrigerator, stock, tank, express, or sleeping car, or by some other name.

History. Acts 1953, No. 167, § 1; 1965, No. 470, § 1; A.S.A. 1947, § 84-624.

26-26-1702. Report required.

The president or other chief officer of every private car company shall, on or before April 1 each year, make and file with the Tax Division of the Arkansas Public Service Commission a verified statement showing:

(1) The aggregate number of miles made by each class of its cars over the several lines of railroad in this state during the calendar year next preceding; and

(2) The average number of miles traveled per day by the cars of each particular class in the ordinary course of business during the period.

History. Acts 1915, No. 224, § 1; C. & M. Dig., § 10001; Acts 1923, No. 560, § 1; Pope's Dig., § 13751; Acts 1953, No. 167, § 2; A.S.A. 1947, § 84-617.

26-26-1703. Report by railroads of private car mileage.

The president or other chief officer of every railroad whose lines run through or in this state shall, on or before April 1 each year, make and file with the Tax Division of the Arkansas Public Service Commission a verified statement showing:

(1) Separately, by classes, the total number of miles traveled by the cars of each private car company over its lines within this state during the calendar year next preceding;

(2) The post office address of each car company; and

(3) The average number of miles traveled per day, in the ordinary course of business during the period, over its lines in Arkansas by each class of cars.

History. Acts 1915, No. 224, § 2; C. & Pope's Dig., § 13752; Acts 1953, No. 167, M. Dig., § 10002; Acts 1923, No. 560, § 2; § 3; A.S.A. 1947, § 84-618.

26-26-1704. Failure to make statements.

(a) If any private car company shall fail or refuse to make and file the statement required by § 26-26-1702 within the time therein prescribed or shall fail or refuse to authorize in writing the use of the information and data submitted by the several railroads in determining its assessment, the Tax Division of the Arkansas Public Service Commission shall proceed to determine and fix the assessment of each car company on the basis of information reported to it by the several railroad companies and other information it may obtain. Each assessed valuation so determined shall be increased by ten percent (10%) as a penalty for failure to file its report, and taxes shall be extended and certified on the increased amount.

(b) If any railroad shall fail or refuse to make and file the statement as required in § 26-26-1703, it shall forfeit to the state, as a penalty for the failure or refusal, the sum of five hundred dollars (\$500). Any failure or refusal shall be certified by the division to the Attorney General, whose duty it shall be to institute such action as he or she may deem proper for the collection of any penalty.

History. Acts 1915, No. 224, § 6; C. & Pope's Dig., § 13756; Acts 1953, No. 167, M. Dig., § 10006; Acts 1923, No. 560, § 6; § 4; A.S.A. 1947, § 84-622.

26-26-1705. Valuation and assessment.

(a) The Tax Division of the Arkansas Public Service Commission, from the statements required by §§ 26-26-1702 and 26-26-1703 and other information it may obtain, shall ascertain and fix, as the basis for assessment, a uniform daily average travel of cars of each particular class and the valuation per car of each particular class and, accordingly, the number of cars required to make the total mileage traveled in this state within the year by the cars of each class of each private car company, and the assessed valuation of all cars of each car company.

(b) When the basis for assessment shall have been determined, written notice shall be forwarded by first-class mail to each car company having filed the report required in § 26-26-1702, and each company, if dissatisfied with the basis for assessment so fixed, may file written petition for review within ten (10) days from date of the notice.

History. Acts 1915, No. 224, § 3; C. & Pope's Dig., § 13753; Acts 1953, No. 167, M. Dig., § 10003; Acts 1923, No. 560, § 3; § 5; A.S.A. 1947, § 84-619.

26-26-1706. Levy of tax, collection, and penalty for delinquency.

(a) The Tax Division of the Arkansas Public Service Commission, having ascertained and fixed the assessed valuation of the cars of each private car company as provided in § 26-26-1705, shall levy and extend against each valuation the average rate of ad valorem levy prevailing throughout the state for the respective assessment year, this rate to be determined as provided by § 26-26-1615, whereupon, the division, ten (10) days before due date, shall certify the tax so extended to the Director of the Department of Finance and Administration for collection.

(b) The director shall immediately forward by first-class mail to each private car company against which a tax has been extended and so certified a notice showing the assessed valuation, the applicable rate of levy, the amount of tax charged, and the due date thereof.

(c)(1) If the taxes are not paid on or before the date on which taxes, ad valorem, or any part thereof, on personal property become delinquent, the director shall add a penalty of ten percent (10%) and mail to each company so delinquent a statement of the tax and penalty.

(2)(A) If the tax and penalty are not paid on or before the date on which county collectors are authorized to collect taxes by distraint, the director shall, in lieu of the ten percent (10%) penalty, add to the tax a penalty of twenty-five percent (25%) and certify the tax and penalty to the Attorney General for collection.

(B) The director's statement of tax and ten percent (10%) penalty shall warn that if the tax and penalty are not paid within the time therein stated, in lieu of the ten percent (10%) penalty, a penalty of twenty-five percent (25%) will be added, and the tax and penalty shall be certified to the Attorney General for collection.

(d) For the purpose of collecting these taxes and penalties, the director or the Attorney General, in addition to the powers in them vested for the collection of taxes, shall have all the powers vested in county collectors for the purpose of collecting delinquent personal property taxes.

History. Acts 1915, No. 224, § 4; C. & Pope's Dig., § 13754; Acts 1953, No. 167, M. Dig., § 10004; Acts 1923, No. 560, § 4; § 6; A.S.A. 1947, § 84-620.

26-26-1707. Disposition of taxes and penalties.

(a)(1) All taxes and penalties collected under the provisions of this subchapter shall be deposited into the State Treasury as trust fund income, to the credit of the Ad Valorem Tax Fund.

(2)(A) The Treasurer of State shall annually transmit to the respective county treasurers of the several counties of the state the proportionate part of the fund coming from the source that the assessed value of the single or first main track railroad mileage in his or her respective county bears to the assessed value of the single or first main track railroad mileage in all counties, the ratios to be furnished by the Tax Division of the Arkansas Public Service Commission on request of the Treasurer of State.

(B) The respective county treasurers shall allocate the amount so received among the several county funds and the school districts and municipalities of his or her county in which is located main track railroad mileage, in the ratio that millage taxes payable to each on the assessed value of single or first main track railroad mileage for the respective assessment year, when separately computed, bears to the total millage taxes payable to all such funds, districts, and municipalities from this source, when separately computed.

(b)(1) So long as any agency of this state shall have the function or be charged with the duty of making audits of the records and accounts of the officers and employees of counties, municipalities, or school districts, or so long as any agency of this state shall have the function or be charged with the duty of assessing the property referred to in this subchapter, or so long as any agency of this state shall have the function or be charged with the duty of furnishing guidance, instruction, and assistance to the county assessor in the performance of his or her duties, then the aggregate total amount expended by this state in the performance and carrying out of the functions and duties indicated shall be a proper charge against the taxes and penalties credited to the fund under subsection (a) of this section.

(2) It shall be the duty of the Chief Fiscal Officer of the State to annually determine the amount of these costs and to certify to the Treasurer of State the amount that the aggregate of the taxes and penalties exceeds these costs in order that the excess may be transmitted to the respective county treasurers as provided in this section.

History. Acts 1953, No. 167, § 7; 1965, No. 470, § 2; A.S.A. 1947, § 84-623.

Cross References. Ad Valorem Tax Fund, § 19-5-906.

SUBCHAPTER 18 — CABLE TELEVISION SYSTEMS**SECTION.**

26-26-1801. Definition.

26-26-1802. Jurisdiction.

SECTION.

26-26-1803. Rules and regulations.

Cross References. Cable television, assessment, § 26-24-103.

Effective Dates. Acts 1975, No. 175, § 5: Feb. 18, 1975. Emergency clause provided: "It is determined by the Legislature that property used by certain cable television systems is not assessed for taxation, and that some question exists as to the nature and extent of the Public Service Commission's jurisdiction and duty as regards this type of business. Therefore, this

enactment is immediately necessary to provide that such properties are properly assessed and that the jurisdiction over such businesses shall be clearly defined. An emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from the date of its passage and approval."

RESEARCH REFERENCES

ALR. Cable television equipment or services as subject to sales or use tax. 5 A.L.R.4th 754.

Am. Jur. 71 Am. Jur. 2d, State Tax, §§ 150, 179.
72 Am. Jur. 2d, State Tax, § 816.

26-26-1801. Definition.

As used in this subchapter, unless the context otherwise requires, "cable television system" means any facility that, in whole or in part, receives, directly or indirectly, over the air and amplifies, or otherwise modifies, the signals transmitting programs broadcast by one (1) or more television or radio stations and distributes the signals by wire or cable to subscribing members of the public who pay for the service.

History. Acts 1975, No. 175, § 3; A.S.A. 1947, § 84-103.2.

26-26-1802. Jurisdiction.

The Arkansas Public Service Commission shall have no jurisdiction over or duties as regards cable television systems other than the duty to make original assessments of the property incorporated in or used by those systems as herein provided.

History. Acts 1975, No. 175, § 4; A.S.A. 1947, § 84-103.3.

26-26-1803. Rules and regulations.

The Tax Division of the Arkansas Public Service Commission shall adopt such rules and regulations as are necessary in order to make original assessments of all property, both real and personal, used by cable television systems in this state.

History. Acts 1975, No. 175, § 2; A.S.A. 1947, § 84-103.1.

SUBCHAPTER 19 — UNIFORM SYSTEM OF REAL PROPERTY ASSESSMENT

SECTION.

- 26-26-1901. Definitions.
- 26-26-1902. Reappraisal.
- 26-26-1903. Criteria for reappraisal.
- 26-26-1904. Objectives.
- 26-26-1905. Rules relating to reappraisal procedures.
- 26-26-1906. Computer-assisted mass appraisal systems.

SECTION.

- 26-26-1907. Arkansas Real Property Reappraisal Fund.
- 26-26-1908. Applicability of relation to ad valorem tax.
- 26-26-1909. Relation to previous requirements.
- 26-26-1910. Scope.
- 26-26-1911. Department authority.

A.C.R.C. Notes. Acts 2012, No. 254, § 8, provides: “PARCELS. The Assessment Coordination Department shall reimburse counties and professional reappraisal companies monthly up to the maximum cost per parcel, multiplied by the total number of parcels in the county, divided by the number of months in a county’s reappraisal cycle. The term parcel as used herein shall be defined by department rule, and department reimbursements based upon only the total number of parcels determined to qualify under department rule.

“The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013.”

Acts 2012, No. 254, § 9, provides: “MAXIMUM ANNUAL FUNDING FOR REAPPRAISALS/REVIEWS. Whether a county’s reappraisal of real property is simply a review of existing data, or a more extensive reappraisal where every improvement is measured, funding to any county, provided through the Assessment Coordination Department, will be for the actual appraisal cost, up to a maximum of seven dollars per parcel, per year. Counties must use other taxing unit sources of revenue to provide for the cost of real property reappraisals if the cost to com-

plete the reappraisal exceeds seven dollars per parcel.”

Cross References. Mineral rights, § 26-26-1110.

Effective Dates. Acts 1999, No. 1185, § 15: Apr. 7, 1999. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the ad valorem tax system in the state is of critical importance to the state and its citizens; that many property assessments in this state are erroneous and need to be revised; that in order to correct the erroneous assessments, each parcel of taxable property in each county of the state should reviewed, and revalued, at a minimum of once every three (3) years; that the provisions of this act provide for such a review. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

26-26-1901. Definitions.

As used in this subchapter:

- (1) “County-wide reappraisal” means a cyclical review program begun pursuant to the terms of this subchapter;
- (2) “Department” means the Assessment Coordination Department; and

(3) "Reappraisal" means the estimating of the value of all taxable real property within the county as of a given date within a given time frame.

History. Acts 1999, No. 1185, § 10.

26-26-1902. Reappraisal.

(a) Except as provided in subsection (b) of this section, each county in the State of Arkansas shall be required to appraise all market value real estate normally assessed by the county assessor at its full and fair market value at a minimum of one (1) time every three (3) years.

(b)(1) Except as provided in subdivision (b)(2) of this section, any county that has completed a reappraisal under subsection (a) of this section or completed a reappraisal between the years 2002 through 2004 shall not be required to commence or complete an additional reappraisal under the three-year cycle but shall be required to appraise all real property normally assessed by the county assessor at its full and fair market value at a minimum of one (1) time every five (5) years from the previous assessment.

(2)(A) If, as a result of a three-year reappraisal cycle, the new market value real estate assessment is greater than fifteen percent (15%) from the market value real estate assessment in the county in the year preceding the beginning of the reappraisal cycle, the county shall be required to complete its next reappraisal at a minimum of one (1) time every three (3) years from the previous assessment until the new market value real estate assessment is less than fifteen percent (15%) from the market value real estate assessment in the year preceding the beginning of the reappraisal cycle, at which point the county shall be placed into a five-year reappraisal cycle.

(B) If a county in a five-year reappraisal cycle has a new market value real estate assessment that is twenty-five percent (25%) greater than the market value real estate assessment in the county in the year preceding the beginning of the reappraisal cycle, the county shall be required to complete its next reappraisal at a minimum of one (1) time every three (3) years from the previous assessment until the new market value real estate assessment is less than fifteen percent (15%) from the market value real estate assessment in the year preceding the beginning of the reappraisal cycle, at which point the county shall be placed into a five-year reappraisal cycle.

(C) The market value real estate assessments shall be calculated by comparing the total values, unadjusted for the assessment increase limitations required under Arkansas Constitution, Amendment 79.

(3)(A) At the time that a county submits its market value real estate assessments to the Assessment Coordination Department, the county may appeal its new or continued placement into a three-year reappraisal cycle if the increased market value real estate assessment is a result of a single property improvement.

(B)(i) The department shall place a county in a five-year reappraisal cycle if the department concludes that the increase in the new real estate market value assessment is a result of a single property improvement in the county.

(ii) This decision by the department shall be made within thirty (30) calendar days after receiving the appeal.

(4) Each county shall provide the department with the previous and new market value real estate assessments on or before October 1 of the year in which it is required to have completed reappraisal.

(c)(1) The county assessor or other official or officials designated by law shall compare the assessed value of each parcel under a reappraisal or reassessment that is completed in 1999 or later to the assessed value of the parcel for the previous year.

(2) In the first county-wide reappraisal performed after January 1, 2001, by counties subject to Arkansas Constitution, Amendment 79, § 2:

(A) If the assessed value of the parcel increased, then the assessed value of the parcel for the year in which the parcel is reappraised or reassessed shall be adjusted by adding one-third ($\frac{1}{3}$) of the increase to the assessed value for the year prior to the reappraisal or reassessment; and

(B) An additional one-third ($\frac{1}{3}$) of the increase shall be added in each of the next two (2) years.

History. Acts 1999, No. 1185, § 1;
2001, No. 1058, § 1; 2005, No. 2259, § 1.

26-26-1903. Criteria for reappraisal.

The Assessment Coordination Department shall determine which counties shall be required to complete reappraisals in the years stated in § 26-26-1902(b), based on the following criteria:

- (1) The length of time since the last countywide reappraisal;
- (2) The level and quality of assessment within the county;
- (3) The parcel counts within each county; and
- (4) The cost of reappraisal.

History. Acts 1999, No. 1185, § 2;
2001, No. 1058, § 2.

26-26-1904. Objectives.

The objectives of this subchapter are as follows:

- (1) To establish and promote a uniform system of real property assessments within each county of the state and among the counties;
- (2) To provide for the certification of appraisers who perform services under this subchapter and to assure that each has the training determined by the Assessment Coordination Department to be necessary to perform accurate estimations of the valuation of market-value real property and to conduct countywide reappraisals which are of a

high quality to aid the state in its realization of the objectives of this subchapter;

(3) To establish planning and quality assurance guidelines in each county to ensure that all laws and regulations are met, standards of appraisal accuracy are maintained, work is finished on time, and staff and resources are used wisely;

(4) To furnish materials to aid appraisers in assessing real property;

(5) To pay the costs and expenses of reappraisals as determined by the department to be necessary, prudent, and reasonable in the implementation of this subchapter; and

(6) To ensure that all funds expended by the state for reappraisal services are monitored by the department and only that progress and performance of those services as measured by the department to be within the guidelines established by the department are to be compensated by the state.

History. Acts 1999, No. 1185, § 3.

26-26-1905. Rules relating to reappraisal procedures.

(a) To carry out the provisions of this subchapter, the Assessment Coordination Department, as it deems necessary, appropriate, and consistent with the objectives of this subchapter, shall:

(1) Develop and implement rules relating to reappraisal procedures to be followed by counties, specifying annual objectives with respect to the discovery, listing, and valuation of real property for assessment purposes;

(2)(A) Develop and implement rules relating to training, experience, and testing requirements for determining whether a person is qualified to manage a reappraisal.

(B) Any department personnel responsible for approving reappraisal plans or property values resulting from those reappraisals shall be required to meet the same criteria; and

(3)(A) Enter into contracts with private entities for appraisal services on behalf of counties on such terms and conditions as the department deems are consistent with the provisions of this subchapter and are necessary and appropriate in its implementation.

(B) Section 19-11-101 et seq. shall not apply to a contract made under this subchapter and to the expenditure of funds from the Arkansas Real Property Reappraisal Fund.

(b)(1) Each county shall follow the reappraisal procedures established by the department and file a reappraisal management plan with the department no later than November 1 of the year preceding the commencement of the reappraisal.

(2) The reappraisal management plan shall specify a proposed budget, personnel needs, and projected annual progress with respect to the discovery, listing, and valuation of property.

(c) The department shall follow preestablished department rules to determine whether a reappraisal management plan is approved or rejected.

(d)(1) The department shall establish training, experience, and testing requirements, and such other criteria as it deems necessary to determine whether a person is qualified to manage a reappraisal performed under this subchapter.

(2) The department shall not approve a reappraisal management plan that does not name a qualified manager.

(e)(1) Employees of the county assessor may be used to reappraise the county and the county assessor or a designated employee may manage the reappraisal if the county assessor or the designated employee meets the qualifications established in this subchapter and the rules established under this subchapter.

(2)(A) If the initial reappraisal management plan required in subsection (b) of this section as submitted by the county assessor is rejected by the department, the county assessor shall be allowed to submit an alternate reappraisal management plan within thirty (30) days of the rejection of the initial reappraisal management plan.

(B) If the alternate reappraisal management plan is rejected by the department, the county shall employ and enter into a contract for professional services with a professional reappraisal company on behalf of all taxing units in the county as set forth in subsection (f) of this section.

(f)(1) The county assessor may enter into a contract for professional services with a professional reappraisal company when both the proposed contract and the reappraisal management plan submitted by the contractor have been approved by the department.

(2)(A) If the initial reappraisal management plan submitted by the contractor is rejected by the department, the contractor shall be allowed to submit an alternate reappraisal management plan.

(B) If the second reappraisal management plan is rejected by the department, the department shall write a reappraisal management plan that the county shall employ and enter into a contract for professional services with a professional reappraisal company on behalf of all taxing units in the county.

(3) The reappraisal contract must be accompanied by an approved reappraisal management plan.

History. Acts 1999, No. 1185, § 4; 2005, No. 1445, § 1. **Cross References.** Arkansas Real Property Reappraisal Fund, § 19-5-1096.

26-26-1906. Computer-assisted mass appraisal systems.

(a) County assessors or those otherwise responsible for the valuation of real property for assessment purposes shall employ computer-assisted mass appraisal systems approved by the Assessment Coordination Department.

(b) Information stored in the electronic database used in the computer-assisted mass appraisal system shall include, but not be limited to, pertinent physical characteristics and historical sales prices of each property in the county.

(c) The department shall have access to view and obtain the data stored in each county's computer-assisted mass appraisal system via common-use technologies as determined by the department, including without limitation:

- (1) The Internet;
- (2) Network technologies;
- (3) Phone line and modem technologies;
- (4) Compact disk technologies;
- (5) Magnetic tape technologies; or
- (6) Other similar common-use technologies.

History. Acts 1999, No. 1185, § 5;
2007, No. 685, § 1.

26-26-1907. Arkansas Real Property Reappraisal Fund.

(a)(1) There is created a fund to be known as the "Arkansas Real Property Reappraisal Fund".

(2) The proceeds of the fund shall be used to pay counties and professional reappraisal companies for the reappraisal of real property required by this subchapter and shall be in lieu of real property reappraisal funding by the local taxing units in each county of this state.

(b) For cause and after an opportunity for a hearing, the Director of the Assessment Coordination Department may suspend or terminate the contract of any appraisal firm or county.

(c)(1) The fund proceeds shall be distributed monthly, except when there is a determination by the Assessment Coordination Department that proper reappraisal procedures established by the department are not being followed.

(2)(A)(i) Upon a finding by the department that proper reappraisal procedures are not being followed, the county assessor or contractor shall be notified that the reappraisal is out of compliance with accepted guidelines as established in this subchapter and rules enacted pursuant to this subchapter.

(ii) The department shall notify the county assessor or contractor in writing that the county assessor or contractor has thirty (30) days in which to bring the reappraisal into compliance.

(B) If there is a further finding that proper reappraisal procedures are not being followed, the contract shall be promptly terminated and the department shall negotiate another contract and reappraisal management plan for the completion of the reappraisal project.

(d) Based on its expertise and the criteria and requirements set forth in this subchapter, the department shall establish by rule the findings that indicate proper reappraisal procedures are not being followed.

(e) At the end of each countywide reappraisal, the department shall issue a report of the status of the county.

History. Acts 1999, No. 1185, § 6; 1096.
2001, No. 1553, § 57.

Cross References. Mineral rights, §
A.C.R.C. Notes. Acts 1999, No. 1185, 26-26-1110.

§ 6, is also codified, in part, as § 19-5-

26-26-1908. Applicability of relation to ad valorem tax.

The provisions of §§ 26-26-401 — 26-26-409 and 26-26-410 [repealed] relative to the adjustment or rollback of millage levied for ad valorem tax purposes shall be applicable when a countywide reappraisal of property is completed as provided in this subchapter.

History. Acts 1999, No. 1185, § 7. former Assessment Coordination Division,
A.C.R.C. Notes. Former § 26-26-410 was repealed by Acts 2003 (2nd Ex. Sess.),
referred to in this section, concerning re- No. 28, § 5 and No. 105, § 7.
vised millage rate forms produced by the

26-26-1909. Relation to previous requirements.

Implementation of this subchapter does not relieve a county of any previous requirement for a reappraisal.

History. Acts 1999, No. 1185, § 8.

26-26-1910. Scope.

The provisions of this subchapter shall not affect either the duties of the county equalization board or the county assessor's duties in relation to the assessment of personal property or any other responsibilities of the county assessors not directly addressed in this subchapter.

History. Acts 1999, No. 1185, § 9.

26-26-1911. Department authority.

The Assessment Coordination Department shall promulgate regulations for the implementation of this subchapter.

History. Acts 1999, No. 1185, § 11.

SUBCHAPTER 20 — COORDINATION OF UNIFORM REPORTING OF COUNTY PROPERTY TAX INFORMATION

SECTION.

26-26-2001 — 26-26-2003. [Repealed.]

26-26-2001 — 26-26-2003. [Repealed.]

Publisher's Notes. This subchapter, reporting of county property tax information, was repealed by Acts 2011, No. 633,
concerning coordination of uniform re-

§ 5. The subchapter was derived from the following sources:

26-26-2001. Acts 2006 (1st Ex. Sess.), No. 26, § 2; 2006 (1st Ex. Sess.), No. 27, § 2.
26-26-2002. Acts 2006 (1st Ex. Sess.),

No. 26, § 2; 2006 (1st Ex. Sess.), No. 27, § 2.

26-26-2003. Acts 2006 (1st Ex. Sess.), No. 26, § 2; 2006 (1st Ex. Sess.), No. 27, § 2.

CHAPTER 27

EQUALIZATION OF ASSESSMENTS

SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. STATE EQUALIZATION BOARD.
3. COUNTY EQUALIZATION BOARDS.

RESEARCH REFERENCES

ALR. Standing of one taxpayer to complain of underassessment or nonassessment of property of another for state and local taxation. 9 A.L.R.4th 428.

Am. Jur. 72 Am. Jur. 2d, State Tax., §§ 831-833.

C.J.S. 84 C.J.S., Tax., § 489 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — STATE EQUALIZATION BOARD

SECTION.

26-27-201. Authority.
26-27-202. Meeting.

SECTION.

26-27-203. Rules for valuation.
26-27-204. Order of adjustment.

Effective Dates. Acts 1927, No. 129, § 38: approved Mar. 9, 1927. Emergency clause provided: "This act being necessary for the immediate preservation of the pub-

lic peace, health and safety, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage."

CASE NOTES

Constitutionality.

Acts 1927, No. 129 held constitutional. Arkansas Tax Comm'n v. Ashby, 217 Ark. 759, 233 S.W.2d 361 (1950).

26-27-201. Authority.

(a) The Arkansas Public Service Commission shall constitute the State Equalization Board and shall equalize the assessment of property throughout the state.

(b) For this purpose, in addition to the powers and duties conferred on the commission, it shall have power to equalize the assessment of all property in this state between districts, cities, and townships of the same county, between the different counties of this state, and of the property assessed by the commission in the first instance.

History. Acts 1927, No. 129, § 31; Pope's Dig., § 2057; A.S.A. 1947, § 84-714.

A.C.R.C. Notes. The authority of the Arkansas Public Service Commission with respect to the equalization and assess-

ment of property and the administration of tax laws, except with respect to public utilities and carriers, was transferred to the Assessment Coordination Department by Acts 1997, No. 436. See §§ 25-28-102 and 25-28-103.

26-27-202. Meeting.

(a) The Arkansas Public Service Commission shall meet as the State Equalization Board on the first Monday in October of each year for the purpose of equalizing the taxable valuation of all real or personal property.

(b) The board shall:

(1) Examine and compare the returns of the assessment of property in the counties of this state;

(2) Summon and hear witnesses and make or cause to be made investigation relative thereto; and

(3) Proceed to equalize the property, so that all the taxable property throughout this state shall be assessed uniformly at its true and full market or actual value, or at such percentage as has been duly certified by the commission.

History. Acts 1927, No. 129, § 31; Pope's Dig., § 2057; A.S.A. 1947, § 84-714.

A.C.R.C. Notes. The authority of the Arkansas Public Service Commission with respect to the equalization and assess-

ment of property and the administration of tax laws, except with respect to public utilities and carriers, was transferred to the Assessment Coordination Department by Acts 1997, No. 436. See §§ 25-28-102 and 25-28-103.

26-27-203. Rules for valuation.

In the performance of its duties, the members of the State Equalization Board shall be governed by the following rules:

(1) They shall add to the aggregate valuation of the real property of every county which they believe to be valued below its true and full market or actual value, or authorized percentage thereof, such percentage in each case as will bring it to its true and full market or actual value or authorized percentage thereof;

(2) They shall deduct from the aggregate valuation of the real property of every county which they believe to be valued above its true

and full market or actual value, or authorized percentage thereof, such percentage in each case as will reduce it to its true and full market or actual value or authorized percentage thereof;

(3) They shall add to the aggregate valuation of any class of personal property of any county which they believe to be valued below the true and full market or actual value, or authorized percentage thereof, such percentage, in each case, as will raise it to its true and full market or actual value, or authorized percentage thereof;

(4) They shall take from the aggregate valuation of any class of personal property in any county which they believe to be valued above the true and full market or actual value, or authorized percentage thereof, such percentage as will reduce it to its true and full market or actual value or authorized percentage thereof;

(5) If they believe that the valuation of the real or personal property or any class of personal property of any district, city, town, or township of any county should be raised or reduced without raising or reducing the other real or personal property of the county or without raising or reducing it in the same ratio, they may, in every such case, add to or take from the valuation of the real or personal property or any class of personal property of any one (1) or more of the districts, cities, towns, or townships such percentage as they believe will raise or reduce it to its true and full market or actual value, or authorized percentage thereof; and

(6) Before any percentage shall be added to or deducted from the total assessed valuation of any county, township, district, city, or town in this state by the board, it shall cause a notice to be served upon the county judge of the county, who shall cause notice to be published in some newspaper having a general circulation in the county, at least ten (10) days before the date of the proposed change. The notice shall give the date and place at which the board will sit and shall warn the county judge and all citizens of the county to appear at the time and place and show cause, if any they can, why the proposed change should not be made or the assessments increased or reduced.

History. Acts 1927, No. 129, § 32; Pope's Dig., § 2058; A.S.A. 1947, § 84-715.

26-27-204. Order of adjustment.

(a) A record of the proceedings of the State Equalization Board shall be kept by the secretary thereof.

(b)(1) A certified copy of the record or such part thereof as affects his or her county shall, on or before the third Monday in November, be furnished the county clerk of each county in which property, the assessed valuation of which has been ordered by the board increased or reduced, is situated.

(2) In carrying out the order of the board, the county clerk shall add to or deduct from the valuation of any property, as adjusted by the local

assessment and equalization officials, such percentage or amount as the board might so order and shall enter the adjusted or equalized valuation in the proper record and extend taxes thereon.

History. Acts 1927, No. 129, § 33; Pope's Dig., § 2059; A.S.A. 1947, § 84-716.

CASE NOTES

Late Orders.

Where State Board of Equalization does not complete its work by the third Monday in November as required by this section, order of state board to a county equaliza-

tion board to reconvene and make adjustments on properties for the taxable year is invalid. *Arkansas Tax Comm'n v. Ashby*, 217 Ark. 759, 233 S.W.2d 361 (1950).

SUBCHAPTER 3 — COUNTY EQUALIZATION BOARDS

SECTION.

- 26-27-301. Creation.
- 26-27-302. Qualifications.
- 26-27-303. Composition.
- 26-27-304. Selection of members.
- 26-27-305. Terms of office — Vacancies.
- 26-27-306. Oath of members.
- 26-27-307. Secretary of board.
- 26-27-308. Compensation.
- 26-27-309. Meetings.
- 26-27-310. Working groups.
- 26-27-311. Special sessions generally.
- 26-27-312. Special session for purpose of planning work.
- 26-27-313. Attendance by assessor.

SECTION.

- 26-27-314. Authority to classify and zone property.
- 26-27-315. Equalization of assessments.
- 26-27-316. Rights of examination.
- 26-27-317. Applications for adjustment.
- 26-27-318. Appeals to courts.
- 26-27-319. Resolution of valuation adopted.
- 26-27-320. Assessed values entered on record.
- 26-27-321. Abstract of tax books to be filed.
- 26-27-322. Change in market value — Board procedure.

Cross References. Basis of valuation determined by Public Service Commission, § 26-24-104.

Effective Dates. Acts 1919, No. 147, § 18: approved Mar. 1, 1919. Emergency clause provided: "That Act 234 of the Acts of 1917 and Act 124 of the Acts of 1913, and all other laws in conflict herewith, are hereby repealed, and this Act, being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this Act shall take effect and be in force from and after its passage."

Acts 1929, No. 172, § 4: approved Mar. 22, 1929. Emergency clause provided: "It is ascertained and hereby declared that the present system of assessing property for taxation is defective, unfair, unjust and inequitable; that the changes herein contemplated are necessary in order to

bring about a more equitable distribution of the costs of government, so that the immediate operation of the Act is essential for the preservation of the public peace, health and safety, and an emergency is therefore declared, and this Act shall take effect and be in force from and after its passage."

Acts 1953, No. 10, §§ 5, 6: maximum salaries effective Jan. 1, 1953. Emergency clause provided: "It is hereby ascertained and declared that without immediate legislation the county officers affected by this act shall be without adequate deputies and assistants to properly carry out the duties of their offices, and that this act is necessary for the immediate preservation of the public peace, health and safety, and an emergency is hereby declared to exist and this act shall take effect and be in full force from and after its passage."

Acts 1953, No. 388, § 5: approved Mar. 28, 1953. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the provisions of this Act will result in more efficient and equitable administration of the tax laws of the State; and that undue delay in the effective date thereof will preclude such efficiency and equity in making the 1953 assessments. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force from and after its passage."

Acts 1955, No. 230, § 8: Mar. 15, 1955. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that great inequalities and discriminations in property assessments now exist throughout the State, that there is urgent need to equalize property assessments and to make them uniform, that such equalization and uniformity of assessments cannot be obtained except with the aid of County Equalization Boards so established as to make possible such equalization and uniformity of property assessments, and that only by the enactment of this Bill can County Equalization Boards be so established. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health, and safety, shall take effect and be in force from and after the date of its passage and approval."

Acts 1955, No. 371, § 3: Mar. 24, 1955. Emergency clause provided: "It has been found, and is hereby declared by the General Assembly of the State of Arkansas, that great inequalities and discrimination in property assessments now exist throughout the State; that there is urgent need for an impartial and equitable appraisal of certain types of classes of property in many taxing districts throughout the State to serve as an aid to the County Boards of Equalization in determining just and equitable assessments of such property for tax purposes; and that the enactment of this legislation will result in more efficient and equitable administration of the tax laws. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate

preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1959, No. 246, § 5: Mar. 25, 1959. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that the laws of this State regarding the time for assessment of real and personal property and the equalization thereof have resulted and will continue to result in a great loss of revenues to the several taxing units in the State of Arkansas, that on account of such loss of revenues the cities, counties and school districts in the State of Arkansas are deprived of funds and are thereby to such extent handicapped in supplying their respective services to the citizens of this State, and that only by the immediate passage of this Act may such situation be corrected. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 164, § 3: Feb. 12, 1975. Emergency clause provided: "Whereas, in many counties it is difficult to secure a quorum of all the elected councilmen of the towns and cities in the county; and, therefore, the municipalities are often unable to duly appoint their representative on the County Equalization Board; and whereas, these appointments are to be made in May of odd numbered years, therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall take effect immediately on its passage and approval."

Acts 1985, No. 294, § 3: Mar. 8, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that members of County Equalization Boards are appointed for staggered three (3) year terms; and that present law requires that members of County Equalization Boards be appointed in May of each odd numbered year, which results in confusion as to the dates of the beginning and expiration of their terms. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health,

and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1995, No. 891, § 5: Apr. 4, 1995. Emergency clause provided: “It is hereby found and determined by the Eightieth General Assembly that the equalization board of each county should reflect the current population of the county in order to provide adequate service to the county; that current Arkansas law is outdated in this respect; and that if this problem is not immediately corrected it will exist until the next biennium. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1999, No. 1326, § 12: Apr. 12, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that this law will change the working relations of the county equalization boards and will give citizens of the various counties in Arkansas better representation on those boards, and in order for the changes made by this law to have the least disruptive effect, it is necessary for this Act to take effect immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is

neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2009, No. 1189, § 2: July 31, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that several counties in the state are considering changing real estate values during a year the counties are not scheduled to complete reappraisal; that county equalization boards are empowered to make such changes; that county equalization boards have no guidance in the law on when to take action or the type of action that is appropriate under these circumstances. Without proper guidance, county equalization boards face the risk of unintentionally putting the county in noncompliance. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

26-27-301. Creation.

(a) There is created a county equalization board in each county of this state to be selected in the manner provided by §§ 26-27-302 — 26-27-305.

(b) The boards shall have all the powers and authority, and perform all of the duties which are conferred by law on the boards in this state.

History. Acts 1955, No. 230, § 2; A.S.A. 1947, § 84-701.

26-27-302. Qualifications.

The county equalization board of each county shall be composed of qualified electors of the county who have been real property owners for at least one (1) year.

History. Acts 1955, No. 230, § 3; 1957, No. 235, § 1; 1977, No. 287, § 1; A.S.A. 1947, § 84-702; Acts 1999, No. 1326, § 1.

26-27-303. Composition.

(a) The county equalization board of each county shall consist of five (5) members.

(b) However, in counties having a population in excess of seventy-nine thousand (79,000) persons, according to the most recent federal decennial census, the board may consist of nine (9) members.

History. Acts 1955, No. 230, § 3; 1957, 1947, § 84-702; Acts 1995, No. 891, § 1; No. 235, § 1; 1977, No. 287, § 1; A.S.A. 1999, No. 1326, § 2.

CASE NOTES

Improper Size Boards.

Although county board of equalization should have been composed of only three members instead of five by virtue of county's two districts being consolidated, lack of action to select new members of the board meant the five members of the board were serving as holdover members until their successors were duly selected or appointed and qualified. *Gilmore v. Lawrence County*, 246 Ark. 614, 439 S.W.2d 643 (1969).

Even though county may have had population large enough to authorize a nine member board of equalization, where record showed the county judge had difficulty in determining the population of the county from the census report, actions of three member board were not void. *Baldwin v. Rushing*, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-27-304. Selection of members.

(a)(1) When the county equalization board consists of five (5) members:

(A) One (1) member shall be selected by the representatives of the several school districts in the county;

(B) One (1) member shall be selected by the representatives of all cities and incorporated towns in the county;

(C) One (1) member shall be appointed by the county judge; and

(D) Two (2) members shall be appointed by a majority vote of the county quorum court in the following manner:

(i) The county quorum court shall appoint a licensed real estate appraiser to at least one (1) of these two (2) positions, but if a licensed real estate appraiser is not available or willing to serve, the county quorum court may appoint a licensed real estate broker;

(ii) If a licensed real estate broker is not available or willing to serve, the county quorum court may appoint a licensed real estate salesperson; and

(iii) If a licensed real estate salesperson is not available or willing to serve, the county quorum court may appoint any qualified elector of the county.

(E) The five (5) members shall be selected from different sections of the county.

(2) When the county equalization board consists of nine (9) members:

(A) Two (2) members shall be selected by the representatives of the several school districts in the county;

(B) Two (2) members shall be selected by the representatives of all cities and incorporated towns in the county;

(C) Two (2) members shall be appointed by the county judge; and

(D) Three (3) members shall be appointed by a majority vote of the county quorum court in the following manner:

(i) The county quorum court shall appoint a licensed real estate appraiser to at least one (1) of these three (3) positions, but if a licensed real estate appraiser is not available or willing to serve, the county quorum court may appoint a licensed real estate broker;

(ii) If a licensed real estate broker is not available or willing to serve, the county quorum court may appoint a licensed real estate salesperson; and

(iii) If a licensed real estate salesperson is not available or willing to serve, the county quorum court may appoint any qualified elector of the county.

(E) The selecting or appointing agency in each instance shall select or appoint the members from different sections of the county.

(b)(1)(A)(i) For the purpose of making the selection of its members of the county equalization board as provided in this section, the school district's superintendent or designee of each school district in each county shall serve as the representative of his or her respective school district.

(ii) The representatives of the several school districts of each county shall hold a meeting during the month of May of each year in which the term of any of their members of the county equalization board shall expire.

(B) The county judge shall serve as chair of the meeting and shall issue the call for the meeting, which shall specify the time, date, and place of the meeting.

(C)(i) The selection of members of the county equalization board shall be by majority vote of the school board representatives present, and no action shall be taken unless there is a quorum present.

(ii) A majority of all of the school board representatives in the county shall constitute a quorum.

(2)(A)(i) For the purpose of making the selection of their members of the county equalization board, the representatives of the cities and incorporated towns in the county shall hold a meeting during the month of May of each year in which the term of any of their members of the county equalization board shall expire.

(ii) The mayor of the city or town or his or her designee shall serve as the representative of his or her city or town.

(B) The mayor or his or her designee of the county seat city or town or, if there are two (2) county seats, the mayor or his or her designee of the larger county seat city or town shall serve as chair of the meeting and shall issue the call, which shall specify the time, date, and place of the meeting.

(C)(i) The selection of members of the county equalization board shall be by majority vote of the representatives of the cities and towns present, and no action shall be taken unless there is a quorum present.

(ii) A majority of all of the representatives of all cities and incorporated towns in the county shall constitute a quorum.

(iii) Each of the cities and incorporated towns within the county shall be entitled to one (1) vote.

(3) The county judge and the county quorum court of each county shall make the appointment of their members of the county equalization board during the month of May of each year in which the term of any of their members of the county equalization board shall expire.

History. Acts 1955, No. 230, §§ 3, 4; A.S.A. 1947, §§ 84-702, 84-702.1; Acts 1957, No. 235, § 1; 1975, No. 164, § 1; 1999, No. 1326, § 3; 2001, No. 505, § 1; 1977, No. 287, §§ 1, 2; 1985, No. 294, § 1; 2007, No. 12, § 1.

CASE NOTES

Improper Appointments.

When improperly appointed members of a county board of equalization assume office under color of the appointments and

act in good faith, their acts as such members are valid. *Pennington v. Oliver*, 245 Ark. 251, 431 S.W.2d 843 (1968).

26-27-305. Terms of office — Vacancies.

(a) The terms of office of the members of the county equalization boards shall be staggered as follows:

(1)(A) In those counties having a county equalization board composed of five (5) members, the members shall serve three-year staggered terms of office, with each expiring term to expire on the first Monday of June of each year, or until his or her successor is selected or appointed and qualified.

(B) However, on the first Monday in July, 1999, the terms of the present members of each county equalization board with three (3) or five (5) members shall expire and new members shall be appointed as is provided by law, and within thirty (30) days thereafter, the five (5) new members shall meet and determine by lot their respective staggered terms in such a manner that one (1) member's term should expire one (1) year thereafter, two (2) members' terms should expire two (2) years thereafter, and two (2) members' terms should expire three (3) years thereafter; and

(2)(A) In those counties having a county equalization board composed of nine (9) members, the members shall serve three-year staggered terms of office, with each expiring term to expire on the first Monday of June of each year, or until his or her successor is selected or appointed and qualified.

(B) However, on the first Monday in July, 1999, the terms of the present members of each county equalization board with nine (9) members shall expire and new members shall be appointed as is

provided by law, and within thirty (30) days thereafter, the new members shall meet and determine by lot their respective staggered terms in such a manner that the terms of three (3) members each should expire one (1), two (2), and three (3) years, respectively, thereafter.

(b)(1) Upon the expiration of a member's term under the provisions of this section, the successor member shall be appointed or selected for a three-year term or until his or her successor is selected or appointed and qualified.

(2) Upon the expiration of the term of any member of any county equalization board or upon the vacancy of a membership of any county equalization board, the member to fill the vacancy shall be selected by the same group, either the directors of the several districts of the county, the members of the city and town councils of the cities and incorporated towns in the county, the county judge, or the county quorum court that made the selection of the member whose term has expired or has been vacated.

History. Acts 1955, No. 230, §§ 3, 5; 1957, No. 235, §§ 1, 2; 1977, No. 287, § 1; A.S.A. 1947, §§ 84-702, 84-702.2; Acts 1999, No. 1326, § 4.

Publisher's Notes. The proviso to subsection (a)(1) of this section provided that, within thirty (30) days after July 6, 1977, the present members of each county equalization board should determine by lot their respective staggered terms.

The proviso to subsection (a)(2) of this section provided that, within thirty (30) days after July 6, 1977, the present members of each county equalization board should determine by lot their respective staggered terms in such a manner that one (1) member's term should expire one

(1) year thereafter, two (2) members' terms should expire two (2) years thereafter, and two (2) members' terms should expire three (3) years thereafter.

The proviso to subsection (a)(3) of this section provided that, within thirty (30) days after July 6, 1977, the present members of each county equalization board should determine by lot their respective staggered terms in such a manner that one (1) member each appointed by the representatives of the school districts of the county, by the city and town councils, and by the county judge should expire one (1), two (2), and three (3) years, respectively, thereafter.

26-27-306. Oath of members.

(a) Each member of a county equalization board, before entering upon the discharge of his or her duties, shall take the oath of office prescribed in Arkansas Constitution, Article 19, § 20, and further, that he or she will fearlessly, impartially, and faithfully equalize the assessed value of all property assessed and subject to taxation.

(b) The oath shall be subscribed and sworn to by each member of the board before the county clerk, and the county clerk shall make it a matter of record in his or her office.

History. Acts 1929, No. 172, § 25; Pope's Dig., § 13643; A.S.A. 1947, § 84-705.

CASE NOTES

Cited: *Tedford v. Vault*, 183 Ark. 240, 35 S.W.2d 346 (1931); *Beard v. Wilcockson*, 184 Ark. 349, 42 S.W.2d 557 (1931).

26-27-307. Secretary of board.

(a) The county clerk or his or her designee shall serve as secretary of the county equalization board of his or her county and shall keep a complete and accurate journal of its proceedings and perform such other duties as may be by law required by the county equalization board.

(b) In addition, within ten (10) days after the appointment of the county equalization board for the county clerk's county, the county clerk or his or her designee shall file from time to time with the Assessment Coordination Department a statement showing the name and address of each member of the county equalization board.

(c) When any change in the personnel of the county equalization board is made, the county clerk shall immediately so advise the Arkansas Public Service Commission.

History. Acts 1929, No. 172, § 23; Pope's Dig., § 13641; A.S.A. 1947, § 84-703; Acts 2003, No. 202, § 1.

A.C.R.C. Notes. The authority of the Arkansas Public Service Commission with respect to the equalization and assess-

ment of property and the administration of tax laws, except with respect to public utilities and carriers, was transferred to the Assessment Coordination Department by Acts 1997, No. 436. See §§ 25-28-102 and 25-28-103.

CASE NOTES

ANALYSIS

Journal.
Meetings.

Journal.

Acts 1883, No. 114, § 83, providing that the clerk of the county court should keep an accurate journal or record of proceedings was mandatory, and when such record was not kept, proceedings of county equalization board were without effect.

American Trust Co. v. Nash, 111 Ark. 97, 163 S.W. 178 (1914) (decision under prior law).

Meetings.

This section does not require a county clerk to attend all special planning sessions of the county equalization board, even though, by virtue of this section, the county clerk must serve as the board's secretary. *Gilmore v. Lawrence County*, 246 Ark. 614, 439 S.W.2d 643 (1969).

26-27-308. Compensation.

(a) The members of the county equalization board and the secretary thereof of the counties of this state shall receive for their services an amount to be fixed by the county quorum court of the county.

(b) All compensation, together with expenses necessarily incurred by reason of official action of the county equalization board, shall be audited and paid by the county as other claims against the county are audited and paid.

History. Acts 1929, No. 172, § 24; § 1; 1977, No. 481, § 1; A.S.A. 1947, § 84-Pope's Dig., § 13642; Acts 1953, No. 10, 704.
§ 4; 1961, No. 485, § 1; 1969, No. 245,

26-27-309. Meetings.

(a)(1) The county equalization board shall meet on August 1 of each year at the office of either the county clerk or the office of the county assessor.

(2) However, if August 1 falls on a Saturday, a Sunday, or a legal holiday, the meeting shall be held on the next business day which is not a Saturday, a Sunday, or a legal holiday.

(b) At the first meeting of the county equalization board, it shall organize by electing one (1) of its members as chair who, in addition to all other powers and duties conferred in this subchapter, shall have the power to administer oaths to witnesses appearing before the county equalization board.

(c)(1) In addition, the county equalization board shall exercise its functions as a board of equalization to equalize the assessed value of all acreage lands, city and town lots, other real property, and personal property subject to local assessment, regardless of the year in which the property was last assessed by the local county assessor.

(2)(A) Beginning August 1 of each year and continuing through October 1, the county equalization board shall meet as often as is necessary to consider the equalization of all property assessments and all requests for adjustments of assessments by taxpayers.

(B)(i) However, in a county where the assessed value of real and personal property has been found by the Assessment Coordination Department to be below the percentage of the true or fair market value as required by law, the meetings of the county equalization board shall continue until all property assessments are equalized and all requests for adjustments of assessments by taxpayers are considered.

(ii) However, the meetings shall not run later than the third Monday in November of each year.

(d) A majority of the members of the county equalization board shall constitute a quorum for the transaction of business.

History. Acts 1929, No. 172, §§ 25, 26; 1947, §§ 84-705, 84-706; Acts 1999, No. Pope's Dig., §§ 13643, 13644; Acts 1953, 1326, § 5.
No. 388, § 4; 1959, No. 246, § 1; A.S.A.

CASE NOTES

ANALYSIS

Appraisers.
Assessments.

Appraisers.

Where the General Assembly has mandated payment from county funds for appraisal of property, neither the quorum court nor the county judge would have any discretion in whether the expenses should be paid; the expense of the appraisers must be paid by the county, regardless of the results of a referendum. *Quattlebaum v. Davis*, 265 Ark. 588, 579 S.W.2d 599 (1979).

Assessments.

A county equalization board has no authority to reduce or raise anybody's assessment after the third Monday in November. *Jones v. Crouch*, 231 Ark. 720, 332 S.W.2d 238 (1960).

Cited: *Tedford v. Vaulx*, 183 Ark. 240, 35 S.W.2d 346 (1931); *Beard v. Wilcockson*, 184 Ark. 349, 42 S.W.2d 557 (1931); *Layne v. Strode*, 229 Ark. 513, 317 S.W.2d 6 (1958); *Dierks Forests, Inc. v. Shell*, 240 Ark. 966, 403 S.W.2d 83 (1966); *Burgess v. Four States Mem. Hosp.*, 250 Ark. 485, 465 S.W.2d 693 (1971).

26-27-310. Working groups.

County equalization boards consisting of nine (9) members may organize into working groups of three (3) members each for the purpose of making investigations and recommendations to be presented to and passed by the entire county equalization board sitting en banc. For this purpose, each group may select a group chair who shall be vested with all the powers and duties pertaining to the work of his or her particular group as is vested in the chair of the county equalization board.

History. Acts 1929, No. 172, § 26; Pope's Dig., § 13644; Acts 1959, No. 246, § 1; A.S.A. 1947, § 84-706.

CASE NOTES

Cited: *Layne v. Strode*, 229 Ark. 513, 317 S.W.2d 6 (1958); *Dierks Forests, Inc. v. Shell*, 240 Ark. 966, 403 S.W.2d 83 (1966); *Burgess v. Four States Mem. Hosp.*, 250 Ark. 485, 465 S.W.2d 693 (1971).

26-27-311. Special sessions generally.

(a)(1)(A) On petition of the county judge or the county quorum court or on the county equalization board's own motion at any time after adjournment of its regular monthly meeting or after its equalization meetings from August 1 each year through October 1 and before the third Monday in November of each year, the county equalization board of any county shall convene in special session for the purposes of:

(i) Completing its work of the equalization of property assessments; or

(ii) Reviewing or extending its work of the equalization of property assessments.

(B)(i) For these purposes, the county equalization board shall be vested and charged with all the powers and duties with which the

county equalization board is vested and charged when meeting in regular session.

(ii) In addition, the county equalization board may employ qualified appraisers, abstractors, or other persons needed to appraise properties which the county equalization board may need in the discharge of its duties.

(2) The petition to the county equalization board shall specify the date on which the county equalization board shall convene, and the county equalization board may thereafter exercise its functions but not later than the third Monday in November next following.

(b)(1) An appeal from the action of the county equalization board when in special session shall be to the county court in the manner as provided by law.

(2) Any appeal shall be filed within ten (10) days from date of notice of action by the county equalization board and shall be heard and order made by the county court not later than forty-five (45) days prior to the date on which the tax books for the year are required to be delivered to the county collector.

(c)(1) The expense of any special session of the county equalization board including the expense for employment of appraisers, abstractors, and other persons needed shall be allowed and paid from the general fund of the county.

(2)(A) The general fund of the county shall be reimbursed by transfer to it from the funds of the respective taxing units of the county.

(B) The amount to be contributed by each taxing unit shall be in the proportion that the total of the ad valorem taxes collected for the benefit of each taxing unit bears to the total of the ad valorem taxes collected for the benefit of all taxing units during collection period next following the special session.

History. Acts 1951 (Ex. Sess.), No. 9, §§ 1-3; A.S.A. 1947, §§ 84-717 — 84-719; Acts 1999, No. 1326, § 6.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Heller and Sallings, *Survey of Public Law*, 3 U. Ark. Little Rock L.J. 296.

CASE NOTES

ANALYSIS

Appeals.
Appraisers.
Assessments.

Appeals.

Where petition to reduce assessment had been denied by county equalization board, then this remedy had been ex-

hausted before the board, but the right of appeal to the county court still remained, and the board's action or inaction did not preclude pursuing the statutory remedy for a hearing. *Jones v. Crouch*, 231 Ark. 720, 332 S.W.2d 238 (1960).

Appraisers.

Where the General Assembly has mandated payment from county funds for ap-

praisal of property, neither the quorum court nor the county judge would have any discretion in whether the expenses should be paid; the expense of the appraisers must be paid by the county, regardless of the results of a referendum. *Quattlebaum v. Davis*, 265 Ark. 588, 579 S.W.2d 599 (1979).

Assessments.

A county equalization board has no authority to reduce or raise anybody's as-

essment after the third Monday in November. *Jones v. Crouch*, 231 Ark. 720, 332 S.W.2d 238 (1960).

Cited: *Burgess v. Four States Mem. Hosp.*, 250 Ark. 485, 465 S.W.2d 693 (1971); *Prather v. Martin*, 257 Ark. 576, 519 S.W.2d 72 (1975); *Quattlebaum v. Davis*, 265 Ark. 588, 579 S.W.2d 599 (1979).

26-27-312. Special session for purpose of planning work.

(a)(1) The county equalization board, on petition of the county judge or on its own motion, shall, at any time, convene in special session for the purpose of planning its work of equalization of property assessments.

(2) For this purpose only, the county equalization board shall be vested and charged with all the powers and duties with which the county equalization board is vested and charged when meeting in regular session. In addition, the county equalization board shall be empowered to employ qualified appraisers, abstractors, or other persons needed to appraise properties, which appraisal the county equalization board may need in the discharge of its duties.

(b)(1) The expense of any special session of the county equalization board, including the expense for employment of appraisers, abstractors, and other persons needed shall be allowed and paid from the general fund of the county.

(2) The general fund of the county shall be reimbursed by transfer to it from the funds of the respective taxing units of the county, and the amount to be contributed by each taxing unit shall be in the proportion that the total of the ad valorem taxes collected for the benefit of each taxing unit bears to the total of the ad valorem taxes collected for the benefit of all taxing units during the collection period next following the special session.

History. Acts 1955, No. 371, §§ 1, 2; A.S.A. 1947, §§ 84-721, 84-722.

CASE NOTES

ANALYSIS

Appeals.
Appraisers.
County Clerks.

Appeals.

Where petition to reduce assessment had been denied by county equalization board, this remedy had been exhausted before the board, but the right of appeal to

the county court still remained, and the board's action or inaction did not preclude pursuing the statutory remedy for a hearing. *Jones v. Crouch*, 231 Ark. 720, 332 S.W.2d 238 (1960).

Appraisers.

Where the General Assembly has mandated payment from county funds for appraisal of property, neither the quorum court nor the county judge would have any

discretion in whether the expenses should be paid; the expense of the appraisers must be paid by the county, regardless of the results of a referendum. *Quattlebaum v. Davis*, 265 Ark. 588, 579 S.W.2d 599 (1979).

sions of a county equalization board convened pursuant to this section. *Gilmore v. Lawrence County*, 246 Ark. 614, 439 S.W.2d 643 (1969).

County Clerks.

The attendance of the county clerk is not required at all special planning ses-

26-27-313. Attendance by assessor.

It is the imperative duty of the county assessor or his or her deputy to attend each session of the county equalization board and to furnish the county equalization board with all data and information in his or her possession pertaining to the location, amount, kind, and value of any property, the valuation of which is under consideration by the county equalization board.

History. Acts 1929, No. 172, § 29; Pope's Dig., § 13647; A.S.A. 1947, § 84-710.

26-27-314. Authority to classify and zone property.

The county equalization board of any county may classify the personal property and zone and classify the real property in the county and determine the average value of the property so classified or zoned, or units of them, and use the average value so determined as a guide in the equalization of assessments in the county. However, all property shall be assessed according to its value as provided by law.

History. Acts 1953, No. 197, § 1; A.S.A. 1947, § 84-720.

26-27-315. Equalization of assessments.

(a) Immediately after the county assessor files his or her report of the assessment of real and personal property in the office of the county clerk as required by law, the county clerk shall present the report of the assessment to the county equalization board, and the county equalization board shall proceed to equalize the assessed valuation of the properties.

(b) For this purpose, the county equalization board shall observe the following rules:

(1)(A) It shall raise or lower the valuation of any property to bring about a complete equalization.

(B) It shall not raise or lower the valuation of any property without documenting the reason for raising or lowering the valuation of the property, and the documentation shall be attached to the appropriate property record card or cards.

(C) The reasons for lowering or raising the valuation of property shall be limited to:

(i) The assessment is unfair compared with other properties of the same kind similarly situated, evidenced by the fact that the property is assessed higher than neighborhood properties of the same use, size, materials, and condition;

(ii) The assessment is clearly erroneous, evidenced by the fact that the appraisal relies on substantially inaccurate or insufficient information concerning the property; or

(iii) The assessment is manifestly excessive or greatly exceeds what willing and knowledgeable buyers will pay similarly motivated sellers for the property, evidenced by selling prices of similarly situated properties.

(D)(i) It shall not raise or lower the value of any property without reviewing values of similarly situated properties.

(ii) If the same reason for raising or lowering the value of the property exists for those similarly situated properties, the values for those properties shall also be raised or lowered, and the changes shall be documented.

(E) It shall not materially change the records of the county assessor's office, but may only direct that the assessed value of property be raised or lowered in keeping with its documented findings;

(2)(A) In each instance in which the county equalization board shall raise the valuation of any property, it shall immediately notify the owner or his or her agent by first class mail of the increase.

(B) However, all persons present before the county equalization board in person or by agent at the time the increase is ordered are there so notified and shall not be entitled to further notice.

(C) The notice shall state the valuation returned by the county assessor and the valuation fixed by the county equalization board and shall advise the owner or his or her agent that he or she may in person, by agent, petition, or letter apply for and receive consideration or hearing by or before the county equalization board if the application shall be made on or before the first Saturday next preceding the third Monday in September if in regular session for equalization or before the first Saturday next preceding the third Monday of November if meeting in special sessions; and

(3) In each instance in which an assessment is raised and the owner or his or her agent has applied for consideration or hearing for an adjustment of his or her assessment, if the county equalization board has failed to take action on his or her application before adjourning its regular session or if it fails to convene in special session to consider the application, then the county equalization board shall reduce all such increases to the assessed levels of the previous year.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

CASE NOTES

ANALYSIS

Notice.
Raise in Valuations.
Remedies.

Notice.

Alleged error in notices to taxpayers that showed the valuations fixed by the county equalization board, but omitted the valuations stated by the assessor, were rendered harmless as to taxpayers who appeared in ample time before the board. *Gilmore v. Lawrence County*, 246 Ark. 614, 439 S.W.2d 643 (1969).

Raise in Valuations.

A decision of a county board of equalization to increase generally the valuation of rural properties made prior to the assessor's report of assessments was not in violation of this section where no specific valuations were increased until notices were mailed out on the date the assessor's report was delivered to the board. *Gilmore v. Lawrence County*, 246 Ark. 614, 439 S.W.2d 643 (1969).

The decision of a county equalization board to raise rural valuations generally was not an illegal assessment but a proper action of tax equalization where the assessed valuation of all rural lands of the

county were shown to have been about 13 percent of market value and other classes of properties had been assessed at approximately 20 percent of market value. *Gilmore v. Lawrence County*, 246 Ark. 614, 439 S.W.2d 643 (1969).

Remedies.

Where agent of taxpayer mistakenly made excessive assessment of property, taxpayer had remedy before county board of equalization and could not enjoin collection of the excessive taxes under § 16-113-306. *Beard v. Wilcockson*, 184 Ark. 349, 42 S.W.2d 557 (1931).

Where taxpayers complained about the failure of the assessor and the county board of equalization to assess and equalize all property in the county, an injunction to prevent the extension and collection of taxes was not the proper remedy where there were penalties provided by § 26-26-201. *Baldwin v. Rushing*, 254 Ark. 1042, 497 S.W.2d 668 (1973).

Mandamus under § 26-26-301 to insure proper assessment and equalization would have been the proper remedy, rather than injunction of tax collection, to taxpayers' claim of denial of equal protection under U.S. Const. Amend. 14. *Baldwin v. Rushing*, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-27-316. Rights of examination.

(a) The county equalization board, or any member thereof, shall have free access to the records of the office of the county clerk and of the office of the circuit clerk and ex officio county recorder of the county.

(b)(1) The county equalization board or any member may enter upon and view property, and may require witnesses to appear before the county equalization board and testify regarding the location, amount, kind, and value of any or all items of any class or character of property in the county.

(2) The secretary of the county equalization board, in vacation or in session, at the direction of the county equalization board or any member thereof, shall summon witnesses for examination by the county equalization board.

History. Acts 1929, No. 172, § 28; Pope's Dig., § 13646; A.S.A. 1947, § 84-709.

26-27-317. Applications for adjustment.

(a)(1) Any property owner or an agent of a property owner may apply in person, by petition, or by letter to the secretary of the county equalization board on or before the third Monday in August of every year for the adjustment of the county assessor's assessment on the property owner's property or the property of another person.

(2) The county equalization board may not adjust any assessment other than the assessment made during the year it meets to consider an application made under subdivision (a)(1) of this section.

(b)(1) A property owner or an agent of the property owner may personally appear before the county equalization board or pursue the appeal by supplying written documentation as to the adjustment desired.

(2) The property owner or an agent of the property owner shall notify the secretary of the county equalization board, who shall schedule a hearing, and, if practicable, the hearing shall be held at the convenience of the property owner.

(c)(1) The county equalization board shall begin hearing appeals no later than the second Monday in August.

(2) On at least one (1) day each week, appeals shall be heard after normal business hours to accommodate working property owners.

(d)(1) The county equalization board shall decide the merits of an adjustment of assessment application and notify the property owner of its decision in writing at least ten (10) business days after the hearing.

(2) The county equalization board's notification shall include:

(A) The county equalization board's decision;

(B) The right of the property owner to appeal the county equalization board's decision to the county court; and

(C) The deadline for petitioning the county court for a hearing.

History. Acts 1919, No. 147, § 11; C. & M. Dig., § 9911; Acts 1929, No. 172, § 30; Pope's Dig., § 13671; Acts 1951, No. 367, § 1; A.S.A. 1947, § 84-708; Acts 1999, No. 572, § 4; 1999, No. 1326, § 8; 2001, No. 1567, § 2; 2009, No. 276, § 1.

Amendments. The 2009 amendment inserted (a)(2) and redesignated the remaining subdivision as (a)(1).

RESEARCH REFERENCES

Ark. L. Rev. Acts of 1951 Affecting Property Taxation, 5 Ark. L. Rev. 368.

U. Ark. Little Rock L. Rev. Survey of

Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

CASE NOTES

ANALYSIS

In General.**Assessments of Other Persons.****Burden of Proof.****Lowering of Assessments.****In General.**

The opportunity to appeal to the county board of equalization is an essential part of the tract-by-tract procedure, for under the United States Constitution, a property owner is entitled, at some point, to notice and an opportunity to be heard on the fairness of his assessment, as compared with the assessment of other property. *Dierks Forests, Inc. v. Shell*, 240 Ark. 966, 403 S.W.2d 83 (1966).

Ad valorem royalty tax on oil and gas produced from taxpayers' land was not an illegal exaction prohibited by Ark. Const. Art. 16, § 13; the crux of the taxpayers' contention was the timing of the taxation, after production, rather than the tax itself. The proper appeal process for improper ad valorem tax assessments was provided in this section and § 26-27-318. *May v. Debraakers-Lang*, 2012 Ark. 7, — S.W.3d — (2012).

Assessments of Other Persons.

This section evinces a legislative intention to permit a taxpayer to protest to the

county equalization board against a conceived insufficiency in the amount of an assessment of another taxpayer. *Pulaski County v. Commercial Nat'l Bank*, 210 Ark. 124, 194 S.W.2d 883 (1946).

Burden of Proof.

In a proceeding to review an assessment of lands as discriminatory, the burden is on the petitioner to show that such assessment was unfair as compared with the assessment of other lands of the same kind and similarly situated. *Doniphan Lumber Co. v. Cleburne County*, 138 Ark. 449, 212 S.W. 308 (1919) (decision under prior law).

Lowering of Assessments.

Under Acts 1887, No. 92, § 52, where county court lowered assessment of a taxpayer, neither the state nor the tax commission was entitled to relief in equity against such assessment. *State v. Little*, 94 Ark. 217, 126 S.W. 713 (1910) (decision under prior law).

Cited: *Tedford v. Vaulx*, 183 Ark. 240, 35 S.W.2d 346 (1931); *Arkansas Tax Comm'n v. Ashby*, 217 Ark. 759, 233 S.W.2d 361 (1950); *Burgess v. Four States Mem. Hosp.*, 250 Ark. 485, 465 S.W.2d 693 (1971); *Baldwin v. Rushing*, 254 Ark. 1042, 497 S.W.2d 668 (1973); *Rodgers v. Easterling*, 270 Ark. 255, 603 S.W.2d 884 (1980).

26-27-318. Appeals to courts.

(a)(1) The county assessor or any property owner who may feel aggrieved at the action of the county equalization board may appeal from the action of the county equalization board to the county court by filing a petition of appeal with the county clerk.

(2) The county clerk shall summon the members of the county equalization board and issue such process as the county assessor, the county equalization board, or the county judge may request for witnesses and evidence of the amount and value of the property.

(b) No appeal to the county court shall be taken unless the petitioner:

(1) Has exhausted his or her remedy before the county equalization board; or

(2) Was not sent the notice of value change as required by § 26-23-203.

(c)(1) An appeal must be filed on or before the second Monday in October of each year and shall have preference over all matters before the county court and shall be heard and an order made on or before the fifteenth day of November.

- (2)(A) The county court shall notify in writing the property owner or county assessor of its decision no later than twenty (20) working days after the property owner’s appeal hearing.
- (B) The notification shall state the county court’s decision and that the property owner may appeal the decision to the circuit court.
- (d) No reduction shall be allowed except on evidence corroborative of that of the property owner.
- (e) Upon an appeal, any property owner in the county may appear and be heard in support of or in opposition to the appeal.
- (f)(1)(A) The county court shall acquire no jurisdiction to hear the appeal unless the county clerk shall have first given notice of the appeal by publication by one (1) insertion published not less than one (1) week before the date fixed for the hearing of the appeal in a daily or weekly newspaper published and having a bona fide general circulation in the county or in any county in which no daily or weekly newspaper is published, by posting a notice at the courthouse and in four (4) other conspicuous places in the county seat of the county for a period of not less than one (1) week before the date fixed for the hearing of the appeal.
- (B) The notice shall state:
- (i) The name of the parties taking the appeal;
 - (ii) The assessment complained of, together with a definite description of the property so assessed;
 - (iii) The name of the supposed property owner;
 - (iv) The time and place fixed for the hearing of the appeal; and
 - (v) That any property owner in the county may appear at the hearing of the appeal and be heard in support of or in opposition to the appeal.
- (2) The notice of appeal may be in the following form:

“NOTICE OF APPEAL FROM TAX ASSESSMENT

“Notice is hereby given that
hereby appeals to the County Court of
County from an assessment on property described as follows:

Name of Supposed Owner	Description of Property	Amount of Assessment Complained of
.....

“Such appeal will be heard by the county court ato’clockM. at the courthouse at, Arkansas, on the day of, and any owner of property in said county may appear at said hearing in support thereof or in opposition thereto.”

County Clerk

(g) It shall be the duty of the prosecuting attorney or his or her deputy, when called upon by the county assessor, a member of the

county equalization board, or the county court, to represent the county and the state in the prosecution of all appeals before the county courts and the circuit courts.

History. Acts 1919, No. 147, § 11; C. & M. Dig., § 9911; Acts 1929, No. 172, § 30; Pope's Dig., § 13671; Acts 1951, No. 367, § 1; A.S.A. 1947, § 84-708; Acts 1989, No.

34, § 1; 1999, No. 572, § 5; 2005, No. 1947, § 1; 2009, No. 276, § 2.

Amendments. The 2009 amendment rewrote (b).

RESEARCH REFERENCES

Ark. L. Rev. Acts of 1951 Affecting Property Taxation, 5 Ark. L. Rev. 368.

U. Ark. Little Rock L.J. Stafford, Separation of Powers and Arkansas Ad-

ministrative Agencies: Distinguishing Judicial Power and Legislative Power, 7 U. Ark. Little Rock L.J. 279.

CASE NOTES

ANALYSIS

In General.
Jurisdiction.
Necessary Parties.
Notice.
Publication.

In General.

A taxpayer must pursue the remedy providing for his relief or abide by the finding of the county board of equalization. *Clay County v. Brown Lumber Co.*, 90 Ark. 413, 119 S.W. 251 (1909) (decision under prior law).

This section evinces a legislative intention to permit a taxpayer protesting against a conceived insufficiency in the amount of an assessment of another taxpayer to appeal to the county court from an unfavorable disposition of his protest by the county equalization board. *Pulaski County v. Commercial Nat'l Bank*, 210 Ark. 124, 194 S.W.2d 883 (1946).

Where petition to reduce assessment had been denied by county equalization board, then this remedy had been exhausted before the board, but the right of appeal to the county court still remained, and the board's action or inaction did not preclude pursuing the statutory remedy for a hearing. *Jones v. Crouch*, 231 Ark. 720, 332 S.W.2d 238 (1960).

The opportunity to appeal to the courts is an essential part of the tract-by-tract procedure, for under the United States Constitution, a property owner is entitled, at some point, to notice and an opportunity to be heard on the fairness of his

assessment, as compared with the assessment of other property. *Dierks Forests, Inc. v. Shell*, 240 Ark. 966, 403 S.W.2d 83 (1966).

Where statutory provisions for tract-by-tract assessment of property were so imperfectly executed that the assessment was not finalized until the landowner's time for appeal was past, it could not amount to substantial compliance with the law, as the landowner's essential constitutional rights to review are disregarded. *Dierks Forests, Inc. v. Shell*, 240 Ark. 966, 403 S.W.2d 83 (1966).

Subsection (a) of this section specifically provides for appeals on tax questions by either the property owner or the assessor; no further authorization for appeal is needed, for under § 16-67-201, all appeals from county court judgments are granted as a matter of right. *Pulaski County v. Jacuzzi Bros.*, 317 Ark. 10, 875 S.W.2d 496 (1994).

Jurisdiction.

Courts, whether of law or equity, held powerless to give relief against erroneous judgments of assessing bodies unless they are especially empowered by law to do so. *Clay County v. Bank of Knobel*, 105 Ark. 450, 151 S.W. 1013 (1912) (decision under prior law).

When only issue was alleged error of county assessor in fixing valuation of property, there was a statutory remedy by appearance before the county board of equalization, and the property owner having neglected to pursue this remedy, a court of equity had no jurisdiction to re-

view the action of the assessor. *Arlington Hotel Co. v. Buchanan*, 110 Ark. 34, 160 S.W. 895 (1913) (decision under prior law).

Where county court adjourned before county equalization board assessed property so that the property owners were unable to appeal to the county court and at the next term, the court gave the owners the relief to which they would have been entitled at the preceding term, the judgment of the court would not be quashed on certiorari. *Arkadelphia Milling Co. v. Clark County Bd. of Equalization*, 136 Ark. 180, 206 S.W. 70 (1918) (decision under prior law).

Equity will grant relief against void tax assessments, but not against those assessments that are merely erroneous for overvaluation where a statutory remedy by appeal is afforded. *W.P. Brown & Sons Lumber Co. v. Sims*, 146 Ark. 253, 225 S.W. 322 (1920); *Little Red River Levee Dist. No. 2 v. State*, 185 Ark. 1170, 52 S.W.2d 46 (1932).

County court had no jurisdiction of appeal from assessment valuations where there was no publication of the statutory notice required by this section, and this defect was not cured by the fact that the county assessor appeared and contested the case in the county court. *Warren v. Wheatley*, 225 Ark. 901, 286 S.W.2d 334 (1956).

Taxpayer cannot enjoin an assessment where he has failed to exhaust his remedy of appeal from action or inaction by a county board of equalization. *New St. Mary's Gin, Inc. v. Moore*, 232 Ark. 24, 334 S.W.2d 683 (1960).

Necessary Parties.

A school district is not a necessary party to every proceeding for the determination of the assessed value of taxable property. *Pulaski County Bd. of Equalization v.*

American Republic Life Ins. Co., 233 Ark. 124, 342 S.W.2d 660 (1961).

Where taxpayer is granted an exemption from taxation filed in a county court pursuant to Ark. Const., Art. 7, § 28, the county may appeal to the circuit court from the order of the county court pursuant to Ark. Const., Art. 7, § 33, § 16-67-201 and this section, but the assessor should join in the appeal. *Pulaski County v. Jacuzzi Bros.*, 317 Ark. 10, 875 S.W.2d 496 (1994).

Notice.

Under § 26-26-910 and the constitutional requirement of due process of law, a taxpayer must be given notice both of a raised assessment and of his right to a review thereof by the county equalization board, and the provision of this section permitting a taxpayer to appeal to the county court without first having exhausted his remedy before the equalization board in cases where he shall have had no opportunity to appear before the board does not obviate the necessity for such notice. *Prather v. Martin*, 257 Ark. 576, 519 S.W.2d 72 (1975).

Publication.

Where statutory requirement of publication of appeal of assessment valuations was not complied with, order of county court reducing the assessed valuations was void and court could expunge such order even though the term had expired. *Warren v. Wheatley*, 225 Ark. 901, 286 S.W.2d 334 (1956).

Cited: *Tedford v. Vaulx*, 183 Ark. 240, 35 S.W.2d 346 (1931); *Arkansas Tax Comm'n v. Ashby*, 217 Ark. 759, 233 S.W.2d 361 (1950); *Burgess v. Four States Mem. Hosp.*, 250 Ark. 485, 465 S.W.2d 693 (1971); *Baldwin v. Rushing*, 254 Ark. 1042, 497 S.W.2d 668 (1973); *Rodgers v. Easterling*, 270 Ark. 255, 603 S.W.2d 884 (1980).

26-27-319. Resolution of valuation adopted.

(a) Each county equalization board, immediately on the completion of its work of equalization and before final adjournment, shall adopt a resolution wherein it shall be stated the percentage of true market or actual value at which it has equalized the assessed values of the property of the county under its jurisdiction for the year.

(b)(1) The resolution shall be signed by a majority of the members of the county equalization board.

(2) A copy of the resolution, together with an abstract of the adjusted assessment by total of items and value, shall be forwarded to the Assessment Coordination Department no later than thirty (30) days after final adjournment of the county equalization board.

History. Acts 1929, No. 172, § 31; Pope's Dig., § 13672; A.S.A. 1947, § 84-711; Acts 2011, No. 569, § 1.

Amendments. The 2011 amendment subdivided part of (b) as (b)(2); inserted "county equalization" in (b)(1); and substituted "Assessment Coordination Department no later than thirty (30) days after final adjournment of the county equalization board" for "Arkansas Public Service Commission on or before the first Monday in October of each year" in (b)(2).

26-27-320. Assessed values entered on record.

- (a) It is the duty of the county clerk of each county to enter upon the assessment record of his or her county the adjusted or equalized assessed value of any and all property as found and fixed by the county equalization board.
- (b) In making the tax books of the county, unless further adjustments are ordered by the county court or the State Equalization Board, the county clerk shall extend the taxes on the adjusted or equalized values.

History. Acts 1929, No. 172, § 32; Pope's Dig., § 13673; A.S.A. 1947, § 84-712.

26-27-321. Abstract of tax books to be filed.

- (a) The county clerk of each county shall, on or before the second Monday in November of each year, unless otherwise ordered and directed by the State Equalization Board, file with the State Equalization Board, on such forms as it may prescribe, a "Final Abstract of the Tax Books".
- (b) The abstract shall show, by total of items and value, the total assessment of his or her county after all adjustments as may be ordered by the county equalization board and the county court have been made.

History. Acts 1929, No. 172, § 33; Pope's Dig., § 13674; A.S.A. 1947, § 84-713.

Cross References. Time to equalize assessments and certify total assessed value, § 26-26-304.

CASE NOTES

Cited: Arkansas Tax Comm'n v. Ashby, 217 Ark. 759, 233 S.W.2d 361 (1950).

26-27-322. Change in market value — Board procedure.

- (a) The purpose of this section is to:
 - (1) Set out the procedure for a county equalization board to follow when changing real property values in a year when a county is not completing reappraisal; and

(2) Require the county equalization board to consult with the Assessment Coordination Department to utilize data compiled under the department's sales ratio study.

(b) If in the judgment of the county equalization board or the county judge based upon current economic conditions a number of real estate parcels in a county may have decreased in market value since the last countywide reappraisal, then the county equalization board may by its motion or the county judge may petition for the county equalization board to enter into a special session to determine what action is needed under this section to address the decrease in market value.

(c) The county equalization board shall not take action as proposed in the special session under subsection (b) of this section until the county equalization board has:

(1) Consulted the county assessor on the proposed action in the special session;

(2) Consulted the department on the proposed action in the special session; and

(3) Analyzed the current real estate market in the county.

(d) The county equalization board may employ a professional appraisal manager to analyze the current real estate market in the county to fulfill its obligation under subdivision (c)(3) of this section.

(e) If the county equalization board determines in the special session that action is needed under this section, the county equalization board shall adjust market values of real estate in the county under the methodology established by the rules of the department.

(f) The department shall promulgate rules to:

(1) Set out the procedure for a county equalization board to make a determination whether action is needed under this section; and

(2) Establish the methodology to be used when adjusting the market values of real property.

(g) If the county equalization board fails to follow the methodology to adjust real estate values as set out in the department's rules, the county equalization board shall be subject to withholding of funds from the Arkansas Real Property Reappraisal Fund under § 26-26-1907.

(h) A special session convened under this section is subject to the procedures for a special session of the county equalization board under § 26-27-312.

History. Acts 2009, No. 1189, § 1.

CHAPTER 28

TAX BOOKS AND RECORDS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. UNIT TAX LEDGER SYSTEM.
3. COMPUTERIZED TAX ASSESSMENT AND COLLECTION.

RESEARCH REFERENCES

Am. Jur. 72 Am. Jur. 2d, State Tax., § 731 et seq. **C.J.S.** 84 C.J.S., Tax., § 454 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 26-28-101. Form of tax books.
- 26-28-102. Electronic data processing equipment.
- 26-28-103. Extension of taxes.
- 26-28-104. Recapitulation of taxes.
- 26-28-105. Entry for omitted years.
- 26-28-106. Charging uncollected taxes.
- 26-28-107. Marking of forfeited lands.
- 26-28-108. Delivery of tax books to county collector.
- 26-28-109. [Repealed.]

SECTION.

- 26-28-110. Public records — Preservation.
- 26-28-111. Correction of errors.
- 26-28-112. Books for two judicial districts.
- 26-28-113. Deposit of books in proper district.
- 26-28-114. Listing of the real estate parcels or personal assessments.
- 26-28-115. Emergency petition.

Cross References. All lists, blanks, and records are to be furnished or approved by the Public Service Commission, § 26-26-701.

Preambles. Acts 1887, No. 13 contained a preamble which read:

“Whereas, 1st. Lands have been sold to the State under proceedings purporting to have been had in the courts of this State by virtue of an Act of the General Assembly thereof entitled ‘An Act to enforce the payment of Overdue Taxes,’ approved March 12, 1881, when the taxes for the alleged nonpayment of which such lands were so sold under said proceedings and decrees of said courts, had been in fact paid prior to any such sales, proceedings or decrees of said courts; and,

“Whereas, 2d. Also the lands of many other persons were under like proceedings and decrees aforesaid had, by virtue of said act, sold to the State, where the owners thereof had paid taxes which they supposed were on such lands of their own, but which taxes so paid, owing to an erroneous description in the numbers of the same afterwards were ascertained to be on other lands than their own, and their lands sold to the State as aforesaid; and,

“Whereas, 3d. Said overdue tax act was a novel proceeding in this State that was

productive of hardships in other respects, and it is but just to them that the owners of land at the time of such sale to the State, should have a limited time to redeem the same therefrom, without loss to the State, provided said lands shall not have been sold by the State prior to any such application to redeem;

“Now, therefore....”

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

Acts 1887, No. 92, § 58: effective on passage.

Acts 1899, No. 174, § 4: effective on passage.

Acts 1921, No. 481, § 4: effective on passage.

Acts 1975, No. 522, § 3: Mar. 19, 1975. Emergency clause provided: “It is hereby found and determined by the General Assembly that a number of counties are finding it more convenient and economical, and to be of better service to the public, to use electronic data processing equipment to keep assessment records, and extend the taxes, and prepare the tax books, and prepare Collector’s tax records and receipts by use of electronic data processing equipment, and that the immediate passage of this Act is necessary to establish an orderly procedure for the designation of the appropriate county of-

fice to be responsible for the maintenance and operation of such computer in preparing the tax books, and thereby removing duplication of handling taxing jurisdictions of the several counties with respect to preparation of tax books, and that the immediate passage of this Act is necessary to clarify this situation. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1979, No. 122, § 2: Feb. 13, 1979. Emergency clause provided: “It is hereby found and determined by the General Assembly that some counties in the State have acquired the use of electronic data processing equipment for use in assessing and collecting ad valorem taxes as autho-

rized in Act 522 of 1975 and that such equipment could be used by those counties for several other appropriate county purposes; that Act 522 of 1975 is quite restrictive with respect to the purposes for which the computer equipment may be used by such counties; that this Act is designed to authorize counties which have acquired computer equipment for the purposes prescribed in Act 522 to use such equipment for other appropriate county purposes when the same is approved by the quorum court, and should be given effect immediately to enable those counties to make full use of their equipment. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

26-28-101. Form of tax books.

The preparer of the tax books shall make out in books prepared for that purpose a complete list or schedule of all the taxable property in his or her county and the value of the taxable property as equalized and arranged in the following form:

(1) Each separate tract of real property in the county shall be contained in lines opposite the names of the owners arranged in numerical order, and the tracts may be arranged further by school district and city; and

(2) The aggregate value of personal property of each person, company, or corporation within each county shall be placed in a column opposite the name of the owner, person, company, or corporation in whose name it is listed in alphabetical order, and the personal property may be arranged further by school district and city.

History. Acts 1883, No. 114, § 87, p. 199; C. & M. Dig., § 10009; Pope’s Dig., § 13757; A.S.A. 1947, § 84-801; Acts 2003, No. 295, § 1.

A.C.R.C. Notes. As to annual list prepared by and procedures of the recorder of deeds and mortgages of Cross County, see Acts 1989, No. 255, § 1.

CASE NOTES

ANALYSIS

Combining of Tracts.
Sufficiency of Record.

Combining of Tracts.

Tax sales were not invalidated by fact that two contiguous forty-acre tracts were listed separately in the assessment book

while the county clerk, in making up the tax book, combined the two forty-acre tracts into one call of 80 acres. *Coulter v. Anthony*, 228 Ark. 192, 308 S.W.2d 445 (Ark. 1957).

Sufficiency of Record.

Tax record is not defective for not properly listing lands or extending taxes

against them and for not correctly showing a valid extension of the taxes where any person of average information and understanding could not be mistaken as to tract assessed, its valuation, and amounts of tax assessed for the several purposes

allowed by law. *Evans v. F.L. Dumas Store, Inc.*, 192 Ark. 571, 93 S.W.2d 307 (1936).

Cited: *Aldridge v. Tyrrell*, 301 Ark. 116, 782 S.W.2d 562 (1990).

26-28-102. Electronic data processing equipment.

(a)(1) If a county by appropriate action elects to acquire, lease, rent, or otherwise provide for the use of electronic data processing equipment, commonly referred to as a computer, to keep the assessment records, to prepare the tax books, to prepare the tax settlements, and to prepare the county collector's records and receipts for property taxes, the county quorum court by ordinance may designate one (1) or more appropriate county officers to be responsible for the maintenance and operation of the computer, the keeping of the assessment records, the preparation of the tax books, the preparation of the county collector's records and receipts for property taxes, and the preparation of the tax settlements.

(2)(A) If any county officer other than the county clerk is designated to prepare the tax books or tax settlements, that county officer shall be reimbursed in the manner provided by law.

(B) If the county assessor is designated as the county officer to keep the assessment records, prepare the tax books, and prepare the county collector's receipts by use of electronic data processing equipment, the cost shall be prorated among the respective taxing units in the same manner as is provided by law for defraying the cost of operating the county assessor's office.

(b) When any county acquires, leases, rents, or otherwise provides for the use of electronic data processing equipment for the purposes prescribed in subsection (a) of this section, the county quorum court may, by ordinance, authorize the use of the equipment for any other appropriate county purposes and may provide for prorating the costs thereof among the various county offices.

History. Acts 1975, No. 522, § 1; 1979, No. 122, § 1; A.S.A. 1947, § 84-801.1; Acts 2009, No. 721, § 1.

Amendments. The 2009 amendment, in (a)(1), inserted "to prepare the tax settlements," "the keeping of the assessment records," and "the preparation of the county collector's records and receipts for

property taxes, and the preparation of the tax settlements"; in (a)(2)(A), substituted "county officer" for "county office" or similar language twice, and inserted "or tax settlements"; substituted "county officer" for "agency" in (a)(2)(B); and made related and minor stylistic changes.

26-28-103. Extension of taxes.

After receiving statements of the rates and sums of money to be levied for the current year from the Auditor of State and from such other officers and authorities as shall be legally empowered to determine the rates or amount of taxes to be levied for the various purposes

26-28-104. Recapitulation of taxes.

(a) It shall be the duty of the preparer of tax books to add each tax book delivered to the county collector, making the separate columns of values when added together amount to the sum of the column of total values when added up and, at the end of the tax book, recapitulate the additions of each page, so as to make it prove itself to be correct.

(b) A copy of the recapitulation under this section shall be a part of the tax books.

History. Acts 1883, No. 114, § 89, p. § 13759; A.S.A. 1947, § 84-803; Acts 199; C. & M. Dig., § 10011; Pope's Dig., 2003, No. 295, § 3.

26-28-105. Entry for omitted years.

(a) In all cases in which any preparer of the tax books shall omit, by inadvertence or mistake, in any year to enter on the books of his or her county any lands or lots or parts of lots situated in his or her county subject to taxation, it shall be his or her duty to enter them on the tax books of the next succeeding year and to add to the taxes of the current year the simple taxes of each and every preceding year in which the lands or lots so escaped taxation.

(b) There shall be separate recapitulation of those lands and lots.

History. Acts 1883, No. 114, § 90, p. § 13760; A.S.A. 1947, § 84-804; Acts 199; C. & M. Dig., § 10012; Pope's Dig., 2003, No. 295, § 4.

CASE NOTES

ANALYSIS

Assessment.
Tax Sales.

from the tax books based upon the assessment for the current year. *Saint Louis, I.M. & S. Ry. v. Miller County*, 67 Ark. 498, 55 S.W. 926 (1900).

Assessment.

Where lands have never been placed upon the assessment books until the current year, the county clerk is not authorized to extend against them taxes for the years in which the lands were omitted

Tax Sales.

Sale of land for taxes of 1910 was not invalid because taxes due on such land for previous years were not entered on tax books. *Cotton v. White*, 131 Ark. 273, 199 S.W. 116 (1917).

26-28-106. Charging uncollected taxes.

When, for any cause, the taxes in any county, for any year, shall not be collected, they shall be charged on the tax books for the next year and collected by the same officers and in the same manner as the taxes of that year.

History. Acts 1883, No. 114, § 91, p. 199; C. & M. Dig., § 10013; Pope's Dig., § 13761; A.S.A. 1947, § 84-805.

26-28-107. Marking of forfeited lands.

(a)(1) The preparer of the tax books shall mark opposite every tract, town lot, or city lot that may have been forfeited to the state for the nonpayment of taxes the word "forfeited".

(2)(A) On that tract, town lot, or city lot there shall not be charged any taxes unless the Commissioner of State Lands shall officially advise the preparer that it has become subject to taxation.

(B) In that event, the same taxes shall be charged and collected on the tract, town lot, or city lot as may be allowed by law.

(b) The county assessor shall assess all the lands or lots, or parts of lands or lots, that may appear on the plats or lists furnished to the county assessor.

(c) If any county clerk shall have lost or if the records of his or her office shall not contain a list of the lands forfeited to the state within his or her county, the county clerk shall certify that fact to the Commissioner of State Lands, and the Commissioner of State Lands shall immediately furnish the county clerk with that list.

History. Acts 1883, No. 114, § 93, p. § 13762; A.S.A. 1947, § 84-806; Acts 199; C. & M. Dig., § 10015; Pope's Dig., 2003, No. 295, § 5.

CASE NOTES

Cited: Files v. Jackson, 84 Ark. 587, 106 S.W. 950 (1907).

26-28-108. Delivery of tax books to county collector.

(a) On or before February 1 of each year, the preparer of tax books of each county shall make out and deliver the tax books of his or her county to the county collector with the preparer of tax books' warrant attached, under his or her hand and the seal of his or her office, authorizing the county collector to collect the taxes.

(b) The county collector shall give a receipt for the tax books, in which the amount of the different taxes shall be separately stated, and the county clerk shall file the receipt in the records of the county.

History. Acts 1883, No. 114, § 94, p. No. 16, § 3; Pope's Dig., § 13763; A.S.A. 199; 1887, No. 92, § 37, p. 143; C. & M. 1947, § 84-807; Acts 2003, No. 295, § 6. Dig., § 10016; Acts 1933 (1st Ex. Sess.),

CASE NOTES

ANALYSIS

Delivery.
Liability for Taxes.
Warrant.

Delivery.

A tax sale is invalid where the clerk does not deliver the tax books with his

warrant within time prescribed, this section being mandatory. *Stade v. Berg*, 182 Ark. 118, 30 S.W.2d 211 (1930).

Failure of county clerk to deliver to collector the tax books with his warrant amounts to nothing more than an irregularity, which can be cured by confirmation, although fatal prior thereto. *Kirk v. Ellis*, 192 Ark. 587, 93 S.W.2d 139 (1936).

Liability for Taxes.

Where the buyer was to receive no legal or equitable right under the contract until the purchase price had been paid in full, at which time the seller obligated himself to execute a special warranty deed conveying the lands free of all liens and encumbrances, and the contract was entered into some six weeks after the tax books had been delivered to the collector, the seller was liable for the payment of taxes under the warranty. *Broadhead v. McEntire*, 19 Ark. App. 259, 720 S.W.2d 313 (1986).

Warrant.

Collector is protected against improper entries in tax books by the warrant thereto attached. *Sanders v. Simmons*, 30 Ark. 274 (1875) (decision under prior law).

Warrant directed to the sheriff instead of collector is not invalid when sheriff is also collector. *Keith v. Freeman*, 43 Ark. 296 (1884).

Failure of county clerk to attach to the tax book a warrant authorizing the collector to collect taxes assessed invalidates a tax sale. *Wildman v. Enfield*, 174 Ark. 1005, 298 S.W. 196 (1927); *Hirsch v. Dabbs*, 197 Ark. 756, 126 S.W.2d 116 (1939).

County clerk's warrant reading "You are commanded to collect on each and every

lot and tract of land named in this book ... as follows:" and posted in front of real estate book complied with this section and was not open to objection that it directed collection of taxes on real estate alone where it was not shown that a similar warrant was not entered in the personal tax book. *Alphin v. Banks*, 193 Ark. 563, 102 S.W.2d 558 (1937).

Failure to attach warrant to tax books was an irregularity that was cured by Acts 1935, No. 142 (repealed Acts 1937, No. 264). *Gilley v. Southern Corp.*, 194 Ark. 1134, 110 S.W.2d 509 (1937); *Kansas City Life Ins. Co. v. Moss*, 196 Ark. 553, 118 S.W.2d 873 (1938).

Failure of county clerk to make warrant or to attach it to the tax books within the time required by law makes a tax sale invalid, although defect can be cured by confirmation decree. *Angels v. Redmon*, 198 Ark. 980, 132 S.W.2d 170 (1939).

Evidence showed clerk had not attached warrant to tax books in delivering books to collector. *Ensminger v. Sheffield*, 220 Ark. 598, 248 S.W.2d 877 (1952).

Cited: *Liddell v. Stone*, 101 Ark. 328, 142 S.W. 506 (1911); *Beloate v. State ex rel. Att'y Gen.*, 187 Ark. 17, 58 S.W.2d 423 (1933); *Jones v. Jones*, 236 Ark. 296, 365 S.W.2d 716 (1963).

26-28-109. [Repealed.]

Publisher's Notes. This section, concerning a list of delinquent lands, was repealed by Acts 2003, No. 295, § 11. The section was derived from Acts 1899, No.

174, § 1, p. 312; C. & M. Dig., § 10017; Acts 1921, No. 481, § 3; Pope's Dig., § 13764; A.S.A. 1947, §§ 84-808, 84-808n.

26-28-110. Public records — Preservation.

The tax books delivered to the county collector shall be a public record. At the expiration of the county collector's term of office, they shall be delivered to and deposited in the office of the county clerk, there to be preserved as other records of the county.

History. Acts 1883, No. 114, § 95, p. 199; C. & M. Dig., § 10018; Pope's Dig., § 13765; A.S.A. 1947, § 84-809.

RESEARCH REFERENCES

Ark. L. Rev. *Watkins*, Access to Public Records Under the Arkansas Freedom of Information Act, 37 Ark. L. Rev. 741 (1984).

CASE NOTES

Impeachment.

Evidence insufficient to impeach verity of tax record. Slaton v. Pride, 195 Ark. 1055, 115 S.W.2d 547 (1938).

Cited: Reynolds v. Snyder, 121 Ark. 33, 180 S.W. 752 (1915).

26-28-111. Correction of errors.

(a) When, after the tax books have been delivered to the county collector, it is ascertained that there is an error in the real or personal property tax books, the error shall be corrected in the following manner:

(1)(A) When the county assessor discovers an error in the real property tax books or any error is brought to the attention of the county assessor by any person, the county assessor shall cause the error to be corrected by completing the following prenumbered form in triplicate, indicating thereon the correction to be made:

REAL PROPERTY TAX COR-
RECTION No. _____

School Dist. _____

City _____

Name _____

Address _____ Date 20____

Description of Property	SEC.	TWP.	RGE.	ACRES	100TH	LOT	BLK.	OLD VALU- ATION	COR- RECTED VALU- ATION	NET VALUE CREDIT	NET VALUE DEBIT	MILL	NET TAX CREDIT	NET TAX DEBIT

REMARKS

I hereby certify that the above correction should be made by the Collector

I hereby certify that the above correction has been made

I hereby certify that the above correction will be in-
corporated in the final settlement

Assessor _____ Collector _____ County Clerk _____

(B) Upon completing and signing the above real property tax correction form in triplicate, the county assessor shall retain the original in the county assessor's records and shall transmit two (2) copies to the county collector. The county collector shall sign the two (2) copies received from the county assessor, shall retain one (1) copy in the county collector's records, and shall transmit the remaining copy to the

county clerk, who shall sign it and file it in the records of the county clerk.

(2)(A) When the county assessor discovers an error in the personal property tax books or any error is brought to the attention of the county assessor, he or she shall cause the error to be corrected by completing the following prenumbered form in triplicate, indicating thereon the correction to be made:

REAL PROPERTY TAX CORREC- No.
TION _____

School Dist. _____
City _____
Name _____

Address _____ Date _____
20 _____

Description of Property	Old Valua- tion	Cor- rected Valua- tion	Net Value Credit	Net Value Debit	Mill	Net Tax Credit	Net Tax Debit.
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REMARKS

I hereby certify that the above correction should be made by the Collector	I hereby certify that the above correction has been made	I hereby certify that the above correction will be incorporated in the final settlement
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Assessor _____ Collector _____ County Clerk _____

(B) Upon completing and signing the above personal property tax correction form in triplicate, the county assessor shall retain the original in the county assessor's records and shall transmit two (2) copies to the county collector. The county collector shall sign the two (2) copies received from the county assessor, shall retain one (1) copy in the county collector's records, and shall transmit the remaining copy to the county clerk who shall sign it and file it in the records of the county clerk.

(b) The real property tax correction forms and the personal property tax correction forms required by this section to be kept in the records of the county assessor, county collector, and county clerk may be destroyed upon the expiration of one (1) year after the date on which the Legislative Joint Auditing Committee accepts and files the audit of the particular office performed by the Division of Legislative Audit.

(c) The provisions of this section shall be applicable only to the correction of actual and obvious errors on the tax books and related records, with such errors being restricted to extension errors, erroneous property descriptions, classifications, or listings, and shall not be utilized to make any change in the valuation of any real or personal property as shown on the tax books and related records other than a change in valuation necessitated by the correction of actual and obvious errors as provided in this section. In no case shall any reduction in the valuation of any real or personal property be made, except such as shall have been ordered by the county equalization board, the county court, the circuit court, or the Supreme Court, or be caused by the correction of actual and obvious errors as provided in this section.

History. Acts 1883, No. 114, § 74, p. 199; C. & M. Dig., § 9938; Pope's Dig., § 13722; Acts 1983, No. 875, §§ 1-3; A.S.A. 1947, §§ 84-811, 84-811n, 84-811.1.

Cross References. Arkansas Governmental Compliance Act, § 10-4-301 et seq.

CASE NOTES

Cited: Miller Land & Lumber Co. v. Gurley, 137 Ark. 146, 208 S.W. 426 (1918).

26-28-112. Books for two judicial districts.

It shall be the duty of the county clerks of counties having two (2) judicial districts, except Prairie, Woodruff, and Lawrence, to make out, balance, and recapitulate as required by law one (1) set of tax books for each judicial district of the counties.

History. Acts 1907, No. 190, §§ 3, 7, p. 446; C. & M. Dig., §§ 2041, 8357; Pope's Dig., §§ 2588, 10953; A.S.A. 1947, § 84-812.

Cross References. Discontinuance of township visits, § 26-35-703.
Tax book at different sites, § 26-35-704.

26-28-113. Deposit of books in proper district.

After the completion of the collection of taxes for each year and the settlement of the county collector with the county court, it shall be the duty of the county clerk to keep the tax books deposited in the office of the district to which they belong.

History. Acts 1907, No. 190, § 5, p. 446; C. & M. Dig., §§ 2043, 8359; Pope's Dig., §§ 2590, 10955; A.S.A. 1947, § 84-813.

26-28-114. Listing of the real estate parcels or personal assessments.

(a) This section applies to a tax or fee on the county tax books that is levied by any entity that:

(1) Is not on the county tax books for the prior year;

(2) Applies to more than five-tenths of one percent (0.5%) of either the personal or real estate assessments in the county; and

(3) Requires the county collector to collect the tax or fee.

(b)(1) The entity that levies the tax or fee shall deliver to the preparer of the tax books of the county a complete listing of the real estate parcels or personal assessments on which the tax or fee is applied.

(2) The list shall include the following information:

(A) The name of the owner of the property;

(B) The county parcel and identifying number;

(C) If real property, the legal description; and

(D) The amount of taxes or fees due for each real estate parcel or personal assessment.

(3) The list shall be delivered to the preparer of the tax books no later than January 1 of the year the tax or fee is to be collected.

(4) If the county uses a computer and other electronic equipment to collect taxes, the list shall be given to the preparer of the tax books in an electronic format compatible with and useable by the county's computer or electronic equipment.

(c) All due dates, transfers of funds, and recordkeeping on the tax or fee shall be the same as those currently in use for real estate or personal property taxes.

History. Acts 2003, No. 1443, § 1.

A.C.R.C. Notes. Acts 2003, No. 1443, § 3, provided: "This act applies to any additional tax or fee levied by any entity

that the county collector is required to collect beginning on and after January 1, 2004."

26-28-115. Emergency petition.

(a) If an entity determines that an emergency exists, it may petition the county quorum court of the county to allow the entity to place a tax or fee on the tax books of the county after January 1 and before July 31 of the year in which collection is to be made.

(b) If the county quorum court agrees that an emergency exists:

(1)(A) The tax or fee will be added to the tax books if the entity complies with § 26-28-114.

(B) The January 1 deadline under § 26-28-114 shall become August 15 of the year to be collected; and

(2)(A) The entity shall pay the expense of adding the tax or fee to the tax books and any additional expense incurred by the county in collecting the tax or fee.

(B) The additional expense shall be determined by a committee consisting of the county judge, the preparer of the tax books or the county clerk, and the county collector not later than October 1 of the collection year.

(C) The expense shall be withheld from the proceeds for the tax or fee by the county treasurer and be credited to the county collector's commission account.

History. Acts 2003, No. 1443, § 2.
A.C.R.C. Notes. Acts 2003, No. 1443, § 3, provided: "This act applies to any additional tax or fee levied by any entity

that the county collector is required to collect beginning on and after January 1, 2004."

SUBCHAPTER 2 — UNIT TAX LEDGER SYSTEM

SECTION.

- 26-28-201. Installation.
- 26-28-202. Prerequisites.
- 26-28-203. Effect of adoption.
- 26-28-204. Recorded real estate transfers certified to county collector.

SECTION.

- 26-28-205. Assessments on forms furnished by county collector.

Effective Dates. Acts 1945, No. 207, § 8: Mar. 20, 1945. Emergency clause provided: "It is hereby found and declared by the Fifty-fifth General Assembly of the State of Arkansas that the installation of the so-called 'Unit Tax Ledger System' will result in great savings of money, labor and material to the several counties of the State of Arkansas which might see fit, through their respective Quorum Courts, to adopt and authorize such system, and

because several counties within the State of Arkansas now desire the installation of such a system because of savings in money, labor, materials and employment hours which will be affected thereby, an emergency is hereby declared to exist, and this act, being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in full force from and after the date of its passage and approval."

26-28-201. Installation.

When any county quorum court in any county in the State of Arkansas in regular or special session, by a majority vote, shall approve the installation of a unit tax ledger system, the county judge of the county shall, by court order, authorize the installation of the system if there are sufficient funds available, or which can be made available from the county general fund, to cover the cost of the installation.

History. Acts 1945, No. 207, § 1; A.S.A. 1947, § 84-814.

CASE NOTES

Computations.

A tax sale for an overcharge of two cents caused by the inability of a machine used as authorized by this section to compute

instalments in fractions of a cent is void. Walsh v. Veazy, 224 Ark. 773, 276 S.W.2d 71 (1955).

26-28-202. Prerequisites.

The "unit tax ledger system" shall be a system of tax accounting that covers the following prerequisites:

(1) A ledger account for each unit of real property in the county reflecting a complete tax record for a ten-year period, beginning with the year the system is installed;

(2) The ledger accounts shall be housed in a steel locker that shall be closed and securely locked at the end of each day's business;

(3) The ledger account shall have sufficient space to enable the name of the record owner at the time of the installation of the system to be shown, and ten (10) lines for the names of subsequent owners, a correct legal description of the unit of property assessed, the year for which the tax is charged, the assessed valuation for state and county purposes, the tax charged and the total thereof, the assessed benefits against the property in special improvement districts, a symbol referring to designated special improvement districts in which the property is located, the date of payment of all taxes, the number of the receipt to be issued, and a two-year delinquent tax record;

(4) The system shall also provide an index which will enable a machine operator, the county collector, county clerk, or county assessor, or any other individual to instantly refer to any unit of property by legal description or by the name of the record owner;

(5) The tax statement, installment receipt, total receipts, office copy of tax receipts, posting of tax ledgers, including the valuation and the tax charged, and the proof of work shall all be done by an accounting machine at one (1) time which shall enable the operator to mail a complete tax statement to the taxpayer and file a duplicate copy alphabetically in a steel locker for safekeeping;

(6) Collection statements shall be posted from office copies compiled from the unit tax ledger accounts; and

(7) Upon installation of such a system, a predetermined total of all valuation of the property in the county as assessed by the county assessor for taxation and exemption shall be ascertained and constantly maintained through control accounts for each fund, and the purpose for which each tax has been levied, shall be charged.

History. Acts 1945, No. 207, § 2; A.S.A. 1947, § 84-815.

26-28-203. Effect of adoption.

(a) Under the unit tax ledger system, all counties in the State of Arkansas which shall adopt it shall cause the county collector's office to be the exclusive tax collecting and accounting office of the county, and the county collector shall collect current and delinquent taxes on real and personal property.

(b) All laws and parts of laws relating to real and personal tax collecting, recording, charging, billing, and accounting wherein reference is made to the county clerk, county treasurer, and delinquent tax collector shall mean "county collector." However, the county collector shall settle with the county treasurer of the counties which may adopt the system as is provided by law.

History. Acts 1945, No. 207, § 3; A.S.A. 1947, § 84-816.

CASE NOTES

Substitution of Collector.

In counties operating under the unit tax ledger system, the collector is substituted for the county clerk for purposes of re-

demption from delinquent tax sales. *Vanderbilt v. Washington*, 249 Ark. 1070, 463 S.W.2d 670 (1971).

26-28-204. Recorded real estate transfers certified to county collector.

In all counties in the State of Arkansas wherein the unit tax ledger system is installed, the county recorder of deeds, immediately upon recording any instrument of any kind that transfers or conveys title to real property from one (1) person, firm, corporation, organization, state, county, or municipality to another or whenever title to real property, by whatever means, passes on to another, shall certify to the county collector the names and addresses of the grantors or devisors when known or when they can be ascertained and the name and address of the grantee or devisee when known or when he or she can be ascertained, the book number of the record and the page on which the instrument is recorded, the kind and character of the instrument, and the date thereof. Accordingly, all necessary forms and records required to perfect the installation of the tax system contemplated by this subchapter are authorized, and all laws and parts of laws relating to the manner of handling real and personal property taxes are amended, to conform to this system insofar as the collection thereof is concerned in the counties which, through their county quorum courts, shall adopt the terms and provisions of this subchapter.

History. Acts 1945, No. 207, § 4; A.S.A. 1947, § 84-817.

26-28-205. Assessments on forms furnished by county collector.

(a) All county assessors in counties where the system contemplated by this subchapter is installed shall deliver to the county collector real and personal property assessments on forms furnished by the county collector. The county collector shall then make proper posting of each assessment. As postings are made, the county collector shall compile a proof journal list of the assessments showing the total valuation. The total valuation shall balance with the total of all real and personal property assessments as made by the county assessor.

(b) Thereafter, the county assessor shall verify the total and, when found to be correct, shall make a certificate of assessment of the real and personal property in the county showing a total valuation of all real and personal property assessed in the county, which shall conform with the total valuation assessed by the Arkansas Public Service Commis-

sion as certified down to the county assessor, the county assessor adding to the certificate required by law the following additional paragraph:

"The total valuation of all taxable real property as assessed by me for the year is \$....; and the total valuation of all exempted property as exempted by me for the year is \$....; and the total valuation of all taxable personal property as assessed by me for the year is \$...."

(c)(1) The county assessor shall make the certificate in triplicate and file one (1) copy with the commission, which shall be the county assessor's abstract and which shall give the valuation of all assessments in the county by total and not by items, as provided by § 26-26-1103, and one (1) copy of the certificate shall be filed in the county clerk's office, and the county assessor shall keep one (1) copy in the file in his or her office.

(2) All three (3) of the certificates shall be subscribed and sworn to as provided by law.

History. Acts 1945, No. 207, § 5; A.S.A. 1947, § 84-818.

A.C.R.C. Notes. The authority of the Arkansas Public Service Commission with respect to the equalization and assessment of property and the administration

of tax laws, except with respect to public utilities and carriers, was transferred to the Assessment Coordination Department by Acts 1997, No. 436. See §§ 25-28-102 and 25-28-103.

SUBCHAPTER 3 — COMPUTERIZED TAX ASSESSMENT AND COLLECTION

SECTION.

26-28-301. Use of alternative method.

26-28-302. Use of computer.

26-28-303. Duty of county assessor.

26-28-304. Duty of preparer of tax books.

26-28-305. Duty of county collector.

SECTION.

26-28-306. Final tax settlements.

26-28-307. Permanent record — Commissions.

26-28-308. Distribution of taxes.

26-28-301. Use of alternative method.

It is the intent of this subchapter to provide an alternative method of assessment and collection of taxes in counties utilizing the unit tax ledger system where the use of a computerized system for assessment and collection is utilized. The county quorum court may authorize, by ordinance, the use of this alternative method when it is determined to be in the best interest of the county. The provisions of this subchapter are supplemental to other applicable law.

History. Acts 1993, No. 849, § 1.

26-28-302. Use of computer.

(a)(1) The county quorum court of any county in this state by ordinance may provide for the use of electronic data processing equipment, commonly referred to as a computer, to keep the assessment records, to prepare the tax books, and to prepare the county collector's records and receipts for property taxes.

(2) The county quorum court by ordinance may designate the appropriate county officer to be responsible for the maintenance and operation of the computer.

(3) The county quorum court by ordinance may designate the county clerk, the county assessor, or the county collector as preparer of the tax books.

(b) When a county acquires, leases, rents, or otherwise provides for the use of electronic data processing equipment for the purposes prescribed in subsection (a) of this section, the county quorum court by ordinance may authorize the use of the electronic data processing equipment for any other appropriate county purposes and may provide for prorating the costs of the electronic data processing equipment among the various county offices.

History. Acts 1993, No. 849, § 2; 2009, No. 347, § 1. inserted "county clerk" in (a)(3); and made minor stylistic changes.

Amendments. The 2009 amendment

26-28-303. Duty of county assessor.

Under the system provided for in this subchapter:

(1) It is the duty of the county assessor of each county to enter upon the assessment record of the county the adjusted or equalized assessed value of any and all property as found and fixed by the county equalization board;

(2) In making the tax books of the county, unless further adjustments are ordered by the county court or the State Equalization Board, the preparer of the tax books shall extend the taxes on the adjusted or equalized values;

(3) The county assessor shall deliver the assessment abstract to the State Equalization Board by August 1 of each year;

(4)(A) The county assessor shall make any changes to the abstract after the State Equalization Board finalizes its action.

(B) All changes in assessments, after the county assessor prepares the final abstract of the tax books, shall be made as specified in § 26-28-305(1) and documented by means of a prenumbered two-part change form with the reason for the change noted; and

(5)(A) The county assessor of each county shall, on or before the third Monday in January of each year, unless otherwise ordered and directed by the State Equalization Board, file with the State Equalization Board, on such forms as it may prescribe, a final abstract of the tax books.

(B) The final abstract of the tax books shall show, by total of items and value, the total assessment of the county after all adjustments.

History. Acts 1993, No. 849, §§ 3-6.

26-28-304. Duty of preparer of tax books.

Under the system provided for in this subchapter:

(1) After receiving statements of the rates and sums of money to be levied for the current year from the Auditor of State and from such other officers and authorities, including special improvement districts, as shall be legally empowered to determine the rates or amounts of taxes to be levied for the various purposes authorized by law, and after levied by the county quorum court, the preparer of the tax books shall immediately determine the sums to be levied upon personal property and each tract or lot of real property in the county;

(2) On or before February 1 of each year, the preparer of the tax books of each county shall make out and deliver the tax books of the county to the county collector, with the preparer of tax books' warrant attached, under his or her hand and the seal of his or her office, authorizing the county collector to collect the taxes; and

(3) The county collector shall give a receipt for the tax books, in which the amount of the different taxes shall be separately stated, and the preparer of the tax books shall file the receipt in the records of the county.

History. Acts 1993, No. 849, §§ 7, 8;
2003, No. 295, § 7.

26-28-305. Duty of county collector.

Under the system provided for in this subchapter, the county collector shall:

(1) Make changes to the tax books after the county assessor files the final abstract of the tax books as authorized by the county assessor by a two-part change form;

(2) Prepare the tax statements and tax receipts and collect the taxes; and

(3) Prepare and certify the monthly and final distributions of all current and delinquent taxes collected by the county collector.

History. Acts 1993, No. 849, § 9.

26-28-306. Final tax settlements.

Under the system provided for in this subchapter:

(1) All county collectors' final tax settlements shall be made and filed with the county court on or before the fourth Monday of December each year;

(2)(A) It is the duty of the county court to pass upon the final tax settlement of the county collector and to approve, reject, or restate it on or before December 31 of each year.

(B) Failure of the county judge to so approve, reject, or restate the final tax settlement of the county collector within this period of time shall constitute a misfeasance in office and shall be a violation

punishable by a fine of one hundred dollars (\$100) or removal from office;

(3)(A) If the final tax settlement shall be found to be correct, the county court shall order the final tax settlement spread in full upon the records of the county court.

(B)(i) The county clerk shall certify to the Auditor of State, without delay, the action of the county court on the final tax settlement, whether approved or rejected.

(ii) If rejected, the county collector shall at once proceed to restate the final tax settlement and again submit it to the county court; and

(4) On or before December 31 of each year, after the final tax settlement made by the county collector has been examined and acted upon by the county court as provided in this subchapter, the county collector shall make settlement with the county and its various subdivisions and with the Auditor of State for all state taxes collected.

History. Acts 1993, No. 849, §§ 10-12;
2005, No. 1994, § 168.

26-28-307. Permanent record — Commissions.

Under the system provided for in this subchapter:

(1) The county collector shall maintain a permanent record of all taxes collected and the tax book reflecting all valuation changes and the receipt number, date, and amount of collection under the authority of this subchapter; and

(2) The preparer of the tax books shall receive a commission of two percent (2%) for extending the improvement taxes, and the county collector shall receive a commission of two percent (2%) for collecting them.

History. Acts 1993, No. 849, § 13.

26-28-308. Distribution of taxes.

Under the system provided for in this subchapter, the county treasurer shall distribute the taxes by December 31 of each year as authorized by the final tax settlement approved by the county judge.

History. Acts 1993, No. 849, § 14.

CHAPTERS 29-33

[Reserved]

Index to Title 26 (1-33)

A

ACCOMPLICES AND ACCESSORIES.

Taxation.

Attempt to evade or defeat tax,
§26-18-209.

ACCOUNTANTS.

Certified public accountants.

Taxpayer bill of rights.
Representation of taxpayers at
interviews, §26-18-803.

Taxpayer bill of rights.

Certified public accountant.
Representation of taxpayers at
interviews, §26-18-803.

ACTIONS.

Public service commission.

Taxation of property, privileges and
franchises.
Power of commission to direct and
approve, §26-24-109.

Taxation.

Closure of noncompliant taxpayer's
business.
Judicial relief, §26-18-1003.
Collection of taxes.
Director of department of finance
and administration.
Authority to institute and
prosecute, §26-17-304.
Corruption in office.
Suit by taxpayer to recover taxes
lost by reason of, §26-2-114.
Defense of director of department of
finance and administration in civil
suit, §26-18-309.

AFFIDAVITS.

Taxation.

False answers to questions or
affidavits.
Felony, §26-18-204.

AGENTS.

Public service commission.

Taxation of property, privileges and
franchises.
Investigations, §26-24-115.
Appointment, §26-24-114.
Disclosure of information.
Penalty, §26-24-114.

AGENTS —Cont'd

Public service commission —Cont'd

Taxation of property, privileges and
franchises —Cont'd
Investigations —Cont'd
Penalty.
Disclosure of information,
§26-24-115.
Powers, §26-24-114.

AGRICULTURE.

Assessments.

Property taxes, §26-26-1108.

Greenbelt law.

Property taxes.
Assessments, §26-26-1108.

Property taxes.

Assessments, §26-26-1108.

Taxation.

Property taxes.
Assessments, §26-26-1108.

APPEALS.

Public service commission.

Taxation of property, privileges and
franchises.
Assessments, §26-24-123.
Equalization, §26-24-123.
Public carriers.
Assessment of property,
§26-24-101.
Public utilities.
Assessment of property,
§26-24-101.

Taxation.

Cancellation of license or permit,
§§26-18-601, 26-18-602.
Closure of noncompliant taxpayer's
business, §26-18-1003.
Tax deficiency.
Relief from decisions of director on,
§26-18-406.

Taxpayer bill of rights.

Administrative appeal of liens,
§26-18-811.

ARKANSAS PROPERTY TAXPAYER BILL OF RIGHTS, §§26-23-201 to 26-23-205.

ASSESSMENTS.

Agriculture.

Property taxes, §26-26-1108.

ASSESSMENTS —Cont'd**Taxation.**

Sale or donation of lands forfeited for taxes.

Lands assessed in name of purchaser, §26-26-907.

ATTORNEY GENERAL.**Taxation.**

Defense of director of department of finance and administration in civil suit, §26-18-309.

ATTORNEYS AT LAW.**Finance and administration department.**

Revenue division.

Attorneys for division, §26-17-202.

Taxpayer bill of rights.

Representation of taxpayers at interviews, §26-18-803.

ATTORNEYS' FEES.**Taxation cases, §26-18-406.****AUDITS AND AUDITORS.****Finance and administration department.**

Revenue division.

Field auditors.

Qualifications, §26-17-203.

Taxation.

Department of finance and administration.

Revenue division.

Field auditors.

Qualifications, §26-17-203.

Multistate tax compact.

Interstate audits, §26-5-101.

Procedures, §26-5-107.

B**BANKS AND FINANCIAL INSTITUTIONS.****Notice.**

Property taxes.

Statement of capital stock.

Failure to file, §26-26-1505.

Penalties.

Property taxes.

Statement of capital stock.

Failure to file, §26-26-1505.

Personal property.

Property taxes.

Assessment, §26-26-1503.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd**Property taxes, §26-26-1501 to 26-26-1505.****Assessments.**

Personal property, §26-26-1503.

Real property, §26-26-1504.

Statement of capital stock.

Required, §26-26-1505.

Definitions, §26-26-1502.

Intent of subchapter, §26-26-1501.

Misdemeanors.

Statement of capital stock.

Failure to file, §26-26-1505.

Notice.

Statement of capital stock.

Notice of filing, §26-26-1505.

Penalties.

Statement of capital stock.

Failure to file, §26-26-1505.

Personal property.

Assessments, §26-26-1503.

Property taxable, §26-3-201.

Purposes of subchapter, §26-26-1501.

Real property.

Assessments, §26-26-1504.

Statement of capital stock,
§26-26-1505.

Real property.

Property taxes.

Assessment, §26-26-1504.

BILL OF RIGHTS.**Taxpayer bill of rights, §26-18-801 to 26-18-812.****BONDS, SURETY.****Finance and administration department.**

Revenue division.

Deputy commissioners and other employees, §26-17-204.

Property taxes.

Assessments.

Failure of officers to perform duties.

Liability on official bonds,
§26-26-301.

Taxation.

Appeals from cancellation of license or permit, §26-18-602.

Approval of bonds by director of department of finance and administration, §26-18-304.

Corruption in office.

Suit by taxpayer to recover taxes lost by reason of.

Bond of petitioner, §26-2-114.

BONDS, SURETY —Cont'd**Taxation —Cont'd**

Deficiency, §26-18-406.

Finance and administration
department.

Revenue division.

Deputy commissioners and other
employees, §26-17-204.

Forfeiture of required bond.

Continuance of business or activities
after.

Felony, §26-18-207.

BRIDGES.**Public service commission.**

Taxation of property, privileges and
franchises, §§26-24-101 to
26-24-123.

**Toll bridges, turnpikes or
causeways.**

Public service commission.

Taxation of property, privileges and
franchises, §§26-24-101 to
26-24-123.

Taxation.

Public service commission.

Taxation of property, privileges
and franchises, §§26-24-101 to
26-24-123.

**BUILDING AND LOAN
ASSOCIATIONS.****Property taxes.**

Generally, §§26-26-1501 to 26-26-1505.

BUSES.**Public service commission.**

Taxation of property, privileges and
franchises, §§26-24-101 to
26-24-123.

Taxation.

Public service commission.

Taxation of property, privileges and
franchises, §§26-24-101 to
26-24-123.

C**CARRIERS.****Property taxes.**

Assessments.

Utilities and carriers, §§26-26-1601
to 26-26-1707.

Public service commission.

Taxation of property, privileges and
franchises, §§26-24-101 to
26-24-123.

CARRIERS —Cont'd**Taxation.**

Public service commission.

Taxation of property, privileges and
franchises, §§26-24-101 to
26-24-123.

CEMETERIES.**Property taxes.**

Exempt property, §26-3-301.

CHARITABLE ORGANIZATIONS.**Property taxes.**

Exempt property, §26-3-301.

CHILDREN AND MINORS.**Property taxes.**

Assessments.

Listing of property.

Persons responsible for listing,
§26-26-904.

**CIGARETTES AND TOBACCO
PRODUCTS.****Taxation.**

Confidentiality of records.

Disclosure of confidential
information, §26-18-303.

CLOSURE OF BUSINESS.**Noncompliant taxpayers,**

§§26-18-1001 to 26-18-1006.

COLLEGES AND UNIVERSITIES.**Property taxes.**

Exempt property, §26-3-301.

COMITY.**Taxation.**

Taxes imposed by other states,
§26-18-707.

COMMON CARRIERS.**Public service commission.**

Taxation of property, privileges and
franchises, §§26-24-101 to
26-24-123.

COMMUNICATIONS.**Television.**

Property taxes.

Assessments.

Cable television systems,
§§26-26-1801 to 26-26-1803.

COMPACTS.**Taxation.**

Multistate tax compact, §§26-5-101 to
26-5-108.

COMPLAINTS.**Property taxes.**

Assessments.

Reassessment, §26-26-1301.

COMPUTERS AND SOFTWARE.**Property taxes.**

Records.

Electronic data processing
equipment, §26-28-102.**CONFIDENTIALITY OF
INFORMATION.****Taxation.**

Records, §26-18-303.

Exceptions, §26-18-303.

Taxpayer bill of rights.

Preparers of returns.

Disclosure or use of information by
preparers.

Penalty, §26-18-810.

CONFLICT OF LAWS.**Sales and use taxes.**Streamlined sales and use tax
agreement.

Limited binding effect, §26-20-108.

Relationship of agreement to state
law, §26-20-105.**CONTEMPT.****Public service commission.**Taxation of property, privileges and
franchises.Failure to testify before commission,
§26-24-122.**CORPORATIONS.****Notice.**

Property taxes.

Statement of capital stock.

Notice of filing, §26-26-1505.

Penalties.

Property taxes.

Statement of capital stock.

Failure to file, §26-26-1505.

Property taxes.

Assessments.

Statement of capital stock.

Required, §26-26-1505.

Who to list corporate property,
§26-26-904.

Definitions, §26-26-1502.

Intent of subchapter, §26-26-1501.

Misdemeanors.

Statement of capital stock.

Failure to file, §26-26-1505.

Notice.

Statement of capital stock.

Notice of filing, §26-26-1505.

Penalties.

Statement of capital stock.

Failure to file, §26-26-1505.

Property taxable, §26-3-201.

Purposes of subchapter, §26-26-1501.

CORPORATIONS —Cont'd**Property taxes —Cont'd**

Statement of capital stock.

Notice of filing, §26-26-1505.

Penalty for failure to file,
§26-26-1505.

Required, §26-26-1505.

Public service commission.Taxation of property, privileges and
franchises.Information from private persons or
corporations.Power of commission to require,
§26-24-111.**CORRUPTION.****Taxation.**Corruption in office, §§26-2-111 to
26-2-114.**COSTS.****Taxation.**

Courts costs in tax cases, §26-18-406.

COUNTIES.**Property taxes.**Computerized tax assessment and
collection.Ordinances authorizing use of
alternative method,
§§26-28-301, 26-28-302.

Rate of tax.

Limitations, §26-25-101.

Voluntary taxes.

Use for purposes other than that for
which levied, §26-25-106.**Taxation.**

Counties refusing to pay tax due.

Proceedings against localities,
§26-18-704.

Voluntary taxes.

Use for purposes other than that for
which levied, §26-25-106.**CREDIT CARDS.****Taxation.**

Payment by credit card.

Authority of director, §26-18-310.

CRIMINAL LAW AND PROCEDURE.**Property taxes.**

Assessments.

Delinquent assessments.

Willful delinquency, §26-26-201.

Description of property.

Refusal to give, §26-26-202.

Employees' names.

Failure to furnish to assessors or
collectors on demand,
§26-26-712.

CRIMINAL LAW AND PROCEDURE

—Cont'd

Property taxes —Cont'd

Assessments —Cont'd

Lists.

Failure of officials to perform
duties as to disposition,
§26-26-713.

Motor vehicles.

List of persons and businesses
securing motor vehicle
licenses, §26-26-706.

Stock and stockholders.

Statement of capital stock.

Failure to file, §26-26-1505.

Computerized tax assessment and
collection.

Final tax settlement.

Failure of county judge to
approve, reject or restate,
§26-28-306.

Exemptions.

Disabled veterans, §26-3-306.

Taxation.

Assessment or equalization violations,
§26-2-104.

Attempt to evade or defeat tax,
§26-18-201.

Cancellation or refusal of license or
permit, §26-18-601.

Conduct of business without license,
§26-18-206.

Confidentiality of records.

Disclosure of confidential
information, §26-18-303.

Continuance of business after
forfeiture of bond, §26-18-207.

County assessor failing or neglecting
to make appraisals, §26-2-105.

Failure to obey summons, §26-18-205.

Failure to pay or file return,
§26-18-202.

False answers to questions or
affidavits, §26-18-204.

False or fraudulent reports,
§26-18-203.

Finance and administration
department.

Collection of revenues.

Director neglecting or failing to
turn over collected taxes to
state treasurer, §26-17-501.

Improper tax collecting, §26-2-110.

Reciprocal pacts and agreements,
§26-17-401.

Violations by officials, §26-2-101.

D**DAMAGES.****Taxation.**

Collection of taxes.

Erroneous collection activity,
§26-18-904.

Taxpayer bill of rights.

Departmental employees.

Civil damages.

Failure to release lien, §26-18-808.

Unauthorized collection actions,
§26-18-809.

DECEDENTS' ESTATES.**Real property.**

Redemption, §26-27-310.

Taxation.

Transfer of real property, §26-18-502.

DEFINED TERMS.**Agent.**

Streamlined sales tax administrative
act, §26-21-103.

Agreement.

Streamlined sales tax administrative
act, §26-21-103.

Anonymous data.

Streamlined sales tax administrative
act, §26-21-115.

Assessment.

State tax procedure, §26-18-104.

Attributable to one spouse.

Taxation, §26-18-708.

Base year.

Tax adjustment procedure, §26-26-402.

Building and loan association.

Taxation, §26-26-1502.

Business corporation.

Taxation, §26-26-1502.

Business income.

Multistate tax compact, §26-5-101.

Cable television system.

Taxation, §26-26-1801.

Capital stock tax.

Multistate tax compact, §26-5-101.

Certified automated system.

Streamlined sales and use tax
agreement, §26-20-102.

Streamlined sales tax administrative
act, §26-21-103.

Certified service provider.

Streamlined sales and use tax
agreement, §26-20-102.

Streamlined sales tax administrative
act, §26-21-103.

City.

Taxation, §26-1-101.

DEFINED TERMS —Cont'd**Commercial domicile.**

Multistate tax compact, §26-5-101.

Compensation.

Multistate tax compact, §26-5-101.

Confidential taxpayer information.

Streamlined sales tax administrative act, §26-21-115.

Corporation.

State tax procedure, §26-18-104.

Countywide reappraisal.

Uniform system of real property assessment, §26-26-1901.

Credit.

Taxation, §26-1-101.

Decision of the director.

State tax procedure, §26-18-104.

Deficiency.

State tax procedure, §26-18-104.

Disabled person.

Property taxes, §26-26-1120.

Elderly person.

Federally funded housing, §26-26-1206.

Electronic funds transfer.

Taxation, §26-19-101.

Entity-based exemption.

Streamlined sales tax administrative act, §26-21-103.

Equity.

Federally funded housing for elderly or individuals with disabilities, §26-26-1206.

Excise tax.

State tax procedure, §26-18-104.

Fiduciary.

Income taxes, §26-5-102.

State tax procedure, §26-18-104.

Financial institution.

Motion picture incentives, §26-4-203.

Taxation, §26-26-1502.

Fringe school districts.

Implementation of millage rollback, §26-26-408.

Good faith.

Streamlined sales tax administrative act, §26-21-107.

Gross receipts tax.

Multistate tax compact, §26-5-101.

Handicapped person.

Federally funded housing, §26-26-1206.

Homestead.

Property taxes, §§26-26-1118, 26-26-1122.

Housing.

Federally funded housing for elderly or individuals with disabilities, §26-26-1206.

DEFINED TERMS —Cont'd**Income tax.**

Multistate tax compact, §26-5-101.

Individual.

State tax procedure, §26-18-104.

Investment in bonds.

Taxation, §26-1-101.

Investment in stocks.

Taxation, §26-1-101.

Model 1 seller.

Streamlined sales tax administrative act, §26-21-103.

Model 2 seller.

Streamlined sales tax administrative act, §26-21-103.

Model 3 seller.

Streamlined sales tax administrative act, §26-21-103.

Money.

Taxation, §26-1-101.

Motion picture production company.

Tax incentives, §26-4-203.

National bank.

Taxation, §26-26-1502.

New construction.

Property taxes, §26-26-1122.

Newly discovered real property.

Property taxes, §26-26-1122.

Nonbusiness income.

Multistate tax compact, §26-5-101.

Noncompliant taxpayer.

State tax procedure, §26-18-104.

Nonprofit corporation or association.

Federally funded housing for elderly or individuals with disabilities, §26-26-1206.

Oath.

Taxation, §26-1-101.

Overpayment.

State tax procedure, §26-18-104.

Partnership.

State tax procedure, §26-18-104.

Pensions.

Taxation, §26-1-101.

Person.

State tax procedure, §26-18-104.

Streamlined sales and use tax agreement, §26-20-102.

Streamlined sales tax administrative act, §26-21-103.

Taxation, §26-1-101.

Personally identifiable information.

Streamlined sales tax administrative act, §26-21-115.

Personal property.

Taxation, §§26-1-101, 26-3-306.

DEFINED TERMS —Cont'd**Private car company.**

Taxation, §26-26-1701.

Property owner.

Property taxes, §26-26-1122.

Public utility.

Multistate tax compact, §26-5-101.

Purchaser.

Streamlined sales tax administrative act, §26-21-103.

Real property.

Taxation, §26-1-101.

Reappraisal.

Uniform system of real property assessment, §26-26-1901.

Reason to know.

Taxation.

Spousal relief, §26-18-708.

Resident.

Motion picture incentives, §26-4-203.

Return.

State tax procedure, §26-18-104.

Sale.

Multistate tax compact, §26-5-101.

Sales tax.

Multistate tax compact, §26-5-101.

Streamlined sales and use tax agreement, §26-20-102.

Savings and loan association.

Taxation, §26-26-1502.

Seller.

Streamlined sales and use tax agreement, §26-20-102.

Streamlined sales tax administrative act, §26-21-103.

State.

Multistate tax compact, §26-5-101.

Streamlined sales and use tax agreement, §26-20-102.

State bank.

Taxation, §26-26-1502.

State tax.

Procedure, §26-18-104.

State tax law.

Procedure.

Generally, §26-18-104.

Subdivision.

Multistate tax compact, §26-5-101.

Tangible personal property in transit through this state.

Tax assessments, §26-26-1102.

Tax.

Multistate tax compact, §26-5-101.

Tax collector.

Unit tax ledger system, §26-28-203.

Tax deficiency.

State tax procedure, §26-18-104.

DEFINED TERMS —Cont'd**Taxpayer.**

Multistate tax compact, §26-5-101.

State tax procedure, §26-18-104.

Tax payment addendum format.

Electronic funds transfers, §26-19-107.

Tax return preparer.

State tax procedure, §26-18-104.

This state.

Multistate tax compact, §26-5-101.

To pay taxes by electronic funds transfer, §26-19-107.**Town.**

Taxation, §26-1-101.

Underpayment.

State tax procedure, §26-18-104.

Use-based exemption.

Streamlined sales tax administrative act, §26-21-103.

Use tax.

Multistate tax compact, §26-5-101.

Streamlined sales and use tax agreement, §26-20-102.

DEPOSITIONS.**Public service commission.**

Taxation of property, privileges and franchises.

Power of commission to cause, §26-24-113.

DEPOSITS.**Taxation.**

Finance and administration department.

Collection of revenues.

Duty of director to make daily deposits, §26-17-504.

DISABILITIES, INDIVIDUALS WITH.**Property taxes.**

Assessments, §26-26-1120.

Relief, §26-26-1124.

E**ELECTRICITY.****Public service commission.**

Taxation of property, privileges and franchises, §§26-24-101 to 26-24-123.

Taxation.

Public service commission.

Taxation of property, privileges and franchises, §§26-24-101 to 26-24-123.

EMPLOYMENT RELATIONS.**Property taxes.**

Assessments.

Names of employees.

Furnishing to assessors or
collectors on demand,
§26-26-712.**EXECUTION OF JUDGMENTS.****Taxation.**Collection of delinquent taxes,
§26-18-701.**EXECUTORS AND
ADMINISTRATORS.****Property taxes.**

Assessments.

Listing property of estate,
§26-26-904.**F****FEES.****Oil and gas.**Finance and administration
department.

Director.

Collection of fees, §26-17-303.

Public service commission.Taxation of property, privileges and
franchises.

Witnesses, §26-24-122.

FERRIES.**Public service commission.**Taxation of property, privileges and
franchises, §§26-24-101 to
26-24-123.**Taxation.**

Public service commission.

Taxation of property, privileges and
franchises, §§26-24-101 to
26-24-123.**FIDUCIARIES.****Definitions.**

Fiduciary.

Tax procedure act, §26-18-104.

Property taxes.

Assessments.

Duties as to listing property,
§26-26-904.**Tax procedure act.**

Definition of fiduciaries, §26-18-104.

Final account, §26-18-504.

**FINANCE AND ADMINISTRATION
DEPARTMENT.****Attorneys at law.**

Revenue division.

Attorneys for division, §26-17-202.

**FINANCE AND ADMINISTRATION
DEPARTMENT —Cont'd****Audits.**

Revenue division.

Field auditors.

Qualifications, §26-17-203.

Bonds, surety.

Revenue division.

Deputy commissioners and other
employees, §26-17-204.**Director.**Local sales and use tax ordinances,
§§26-25-107, 26-25-108.

Revenue division.

Personnel.

Authority to employ, §26-17-201.

Motor vehicles.

Director.

Collection of license fees, §26-17-302.

Oil and gas.

Director.

Inspection of petroleum oils and
products and collection of fees,
§26-17-303.**Revenue division.**

Attorneys for division, §26-17-202.

Auditors.

Field auditors.

Qualifications, §26-17-203.

Bonds, surety.

Deputy commissioners and other
employees, §26-17-204.

Director.

Personnel.

Authority to employ, §26-17-201.

Performance required, §26-17-301.

Personnel.

Director.

Authority to employ, §26-17-201.

FINES.**Property taxes.**

Assessments.

Delinquent assessments.

Willful delinquency, §26-26-201.

Description of property.

Refusal to give, §26-26-202.

Employees' names.

Failure to furnish to assessors or
collectors on demand,
§26-26-712.

Lists.

Failure of officials to perform
duties as to disposition,
§26-26-713.

Motor vehicles.

List of persons and businesses
securing motor vehicle
licenses, §26-26-706.

FINES —Cont'd**Property taxes —Cont'd****Assessments —Cont'd**

Stock and stockholders.

Statement of capital stock.

Failure to file, §26-26-1505.

Computerized tax assessment and collection.

Final tax settlement.

Failure of county judge to approve, reject or restate, §26-28-306.

Exemptions.

Disabled veterans, §26-3-306.

Motor vehicles, §26-26-706.

Taxation.

Assessment or equalization violations, §26-2-104.

County assessor failing or neglecting to make appraisals, §26-2-105.

Reciprocal pacts and agreements, §26-17-401.

Violations by officials, §26-2-101.

FIRES AND FIRE PREVENTION.**Property taxes.**

Exemption of fire engines and other implements, §26-3-301.

FORMS.**Property taxes.**

Adjustment of taxes.

Certification form, §26-26-404.

Personal property interim millage adjustment, §26-26-405.

Tax adjustment procedure, §26-26-406.

Assessments.

Furnishing, §26-26-901.

Equalization of assessments.

County equalization boards.

Notice of appeal, §26-27-318.

Records.

Correction of errors, §26-28-111.

Taxation.

Multistate tax compact.

Authorized forms, §26-5-108.

FRANCHISES.**Public service commission.**

Taxation of property, privileges and franchises, §§26-24-101 to 26-24-123.

Taxation.

Public service commission.

Taxation of property, privileges and franchises, §§26-24-101 to 26-24-123.

FRAUD.**Taxation.**

False or fraudulent reports or returns.

Felony, §26-18-203.

G**GAS UTILITIES.****Public service commission.**

Taxation of property, privileges and franchises, §§26-24-101 to 26-24-123.

GOVERNOR.**Public service commission.**

Taxation of property, privileges and franchises.

Consultations with governor, §26-24-120.

GREENBELT LAW.**Property taxes.**

Assessments, §26-26-1108.

GUARDIAN AND WARD.**Property taxes.**

Assessments.

Listing property of wards, §26-26-904.

H**HEARINGS.****Public service commission.**

Taxation of property, privileges and franchises.

Public carriers.

Assessment of property, §26-24-101.

Public utilities.

Assessment of property, §26-24-101.

Taxation.

Cancellation of license or permit, §26-18-601.

Jeopardy assessment, §26-18-402.

Proposed assessments, §§26-18-404, 26-18-405.

HEIRS.**Real property.**

Redemption, §26-27-310.

Transferee taxation, §26-18-502.

HIGHWAYS, ROADS AND STREETS.**Assessments.**

Property taxes.

Improvement district assessments.

Property exempt from assessment, §26-3-308.

HIGHWAYS, ROADS AND STREETS

—Cont'd

Improvement districts.

Property tax assessments.

Property owned by state highway commission or state highway and transportation department.

Exemption from assessment, §26-3-308.

Property taxes.

Property owned by state highway commission or state highway and transportation department.

Exemption from improvement district assessments, §26-3-308.

HOLIDAYS AND OBSERVANCES.**Taxation.**

Last day for performance of act falling on legal holiday, §26-18-105.

HOMESTEADS.**Property taxes.**

Homestead property tax credit, §26-26-1118.

Penalty for claiming more than one credit, §26-26-1119.

Relief for senior citizens and disabled persons, §26-26-1124.

HUSBAND AND WIFE.**Taxation.**

Spousal relief, §26-18-708.

I**IMMUNITY.****Sales and use taxes.**

Streamlined sales tax administrative act, §26-21-106.

IMPROVEMENTS.**Property taxes.**

Assessments, §26-26-1107.

INCOME TAX.**Credits.**

Standard of proof, §26-18-313.

Deductions.

Standard of proof, §26-18-313.

Exemptions.

Standard of proof, §26-18-313.

INJUNCTIONS.**Motion pictures.**

Tax incentive.

Violations of provisions, §26-4-204.

Taxation.

Director authorized to institute, §26-18-702.

INJUNCTIONS —Cont'd**Taxation —Cont'd**

No injunction to stay proceedings for assessment or collection, §26-18-406.

Violations of tax laws.

Director may seek injunction, §26-18-601.

INSPECTIONS.**Oil and gas.**

Finance and administration department.

Director.

Inspection of petroleum oils and products, §26-17-303.

Property taxes.

Assessments.

Assessors, §26-26-910.

INTEREST.**Taxation.**

Extension of time for payment.

Tax not paid when due because of extension, §26-18-505.

Overpayments, §26-18-508.

Tax deficiencies, §26-18-508.

INTERSTATE COMPACTS.**Taxation.**

Multi-state tax compact, §§26-5-101 to 26-5-108.

INVESTIGATIONS.**Public service commission.**

Taxation of property, privileges and franchises.

Agents, §26-24-115.

Appointment, §26-24-114.

Disclosure of information.

Penalty, §26-24-114.

Powers, §26-24-114.

Commission, §26-24-116.

Tax systems, §26-24-119.

Taxation.

Powers of director of department of finance and administration, §26-18-305.

L**LEASES.****Property taxes.**

Assessments.

Listing of property.

Certain leaseholds considered personal property, §26-26-905.

LIENS.**Taxation.**

Release of property from lien,
§26-18-706.

Taxpayer bill of rights.

Administrative appeal, §26-18-811.

Employees of director.

Civil damages for failure to release
lien, §26-18-808.

LIMITATION OF ACTIONS.**Taxation, §26-18-306.**

Appeal of deficiency assessment,
§26-18-406.

LOCAL GOVERNMENTS.**Sales and use taxes.**

Finance and administration
department.

Adoption of tax collected by director,
§§26-25-107, 26-25-108.

M**MAIL.****Property taxes.**

Assessment of personal property taxes
by mail, §26-26-1114.

MAIL BOX RULE.**Taxation, §26-18-105.****MANDAMUS.****Property taxes.**

Assessments.

Compelling performance of duties by
officers, §26-26-301.

MANUFACTURED HOMES.**Property taxes.**

Assessments.

Purchase of manufactured home.

Report to tax assessor,
§26-26-1105.

Real property, §26-3-203.

Subject to taxation, §26-3-203.

MENTAL HEALTH.**Property taxes.**

Assessments.

Listing property.

Persons responsible, §26-26-904.

MORTGAGES AND DEEDS OF TRUST.**Property taxes.**

Assessments.

List of mortgages.

Recorder to file, §26-26-708.

MOTION PICTURES.**Audits.**

Tax incentive, §26-4-210.

MOTION PICTURES —Cont'd**Definitions.**

Tax incentive, §26-4-203.

Injunctions.

Tax incentive.

Violations of provisions, §26-4-204.

Reports.

Tax incentive.

Disbursement report, §26-4-208.

Rules and regulations.

Tax incentive, §26-4-212.

Tax incentive.

Amount, §26-4-206.

Application for, §26-4-208.

Audits, §26-4-210.

Citation of subchapter.

Short title, §26-4-201.

Definitions, §26-4-203.

Disbursement, §26-4-209.

Enforcement of provisions, §26-4-204.

Expenditures.

Estimate.

Providing to motion picture office,
§26-4-208.

Minimum amount for tax incentive,
§26-4-206.

Reports, §26-4-208.

Expiration of incentive, §26-4-207.

Injunctions.

Violations of provisions, §26-4-204.

Legislative declaration, §26-4-202.

Motion picture office.

Defined, §26-4-203.

Registration with office.

Required, §26-4-205.

Name of Arkansas.

Right to refuse use in credit,
§26-4-213.

Registration.

Requirement, §26-4-205.

Reports.

Expenditure reports, §26-4-208.

Rules and regulations, §26-4-212.

Title of subchapter.

Short title, §26-4-201.

MOTOR CARRIERS.**Property taxes.**

Assessments.

Utilities and carriers, §§26-26-1601
to 26-26-1707.

Public service commission.

Taxation of property, privileges and
franchises, §§26-24-101 to
26-24-123.

Taxation.

Public service commission.

Taxation of property, privileges and
franchises, §§26-24-101 to
26-24-123.

MOTOR VEHICLE DEALERS.**Property taxes.**

Assessments.

Motor vehicle dealer inventory,
§26-26-1207.

MOTOR VEHICLES.**Property taxes.**

Assessments.

List of persons and businesses
securing motor vehicle licenses,
§26-26-706.

MUNICIPALITIES.**Property taxes.**

Basis of levy, §26-25-103.

Collection, §26-25-103.

Rate of taxes.

Limitations, §26-25-102.

State tax levy in cities one mile from
state line, §26-25-104.

Taxation.

Cities or towns refusing to pay tax
due.

Proceedings against localities,
§26-18-704.

N**NOTARIES PUBLIC.****Public service commission.**

Taxation of property, privileges and
franchises.

Investigations by agents.

Powers given to, §26-24-114.

NOTICE.**Corporations.**

Property taxes.

Statement of capital stock.

Notice of filing, §26-26-1505.

Financial institutions.

Property taxes.

Statement of capital stock.

Failure to file, §26-26-1505.

Property taxpayer bill of rights.

Annual notice to taxpayer concerning
rights, §26-23-205.

Procedures, §26-23-203.

Taxation.

Cancellation of license or permit,
§26-18-601.

Jeopardy assessment, §26-18-402.

Noncompliance with tax code.

Failure to correct noncompliance
after notification, §26-18-211.

NOTICE —Cont'd**Taxation —Cont'd**

Proposed assessments, §26-18-403.

Requirements generally, §26-18-307.

Returns.

Failure to file after notification,
§26-18-212.

Taxpayer bill of rights.

Content of tax due, deficiency and
other notices, §26-18-806.

O**OATHS OR AFFIRMATIONS.****Property taxes.**

Assessments.

Listing property for taxation,
§26-26-902.

Reassessment.

Appointees, §26-26-1302.

Equalization of assessments.

County equalization boards,
§26-27-306.

Taxation.

Director of department of finance and
administration.

Administration of oaths, §26-18-305.

OIL AND GAS.**Fees.**

Finance and administration
department.

Director.

Collection of fees, §26-17-303.

**Finance and administration
department.**

Director.

Inspection of petroleum oils and
products and collection of fees,
§26-17-303.

Inspections.

Finance and administration
department.

Director.

Inspection of petroleum oils and
products, §26-17-303.

ORDERS.**Property taxes.**

Assessments.

Reassessment, §26-26-1301.

Equalization of assessments.

State equalization board.

Orders of adjustment, §26-27-204.

P**PAWNBROKERS AND PAWNSHOPS.****Property taxes.**

Assessments.

Pawnbrokers to list pledged property, §26-26-906.

PERJURY.**Public service commission.**

Taxation of property, privileges and franchises.

Witnesses.

No exemption from prosecution, §26-24-122.

PERSONAL IDENTIFYING INFORMATION.**Sales and use tax.**

Streamlined sales tax administrative act.

Confidentiality and privacy for consumers dealing with model 1 sellers, §26-21-115.

PERSONAL PROPERTY.**Financial institutions.**

Property taxes.

Assessment, §26-26-1503.

PIPELINES.**Public service commission.**

Taxation of property, privileges and franchises, §§26-24-101 to 26-24-123.

Taxation.

Public service commission.

Taxation of property, privileges and franchises, §§26-24-101 to 26-24-123.

PRIVILEGE TAXES.**Collecting taxes not on books or in greater amount, §26-2-110.****Penalties.**

Officials refusing or neglecting to perform duty, §26-2-108.

Officials violating or failing to comply with law, §26-2-101.

Violation of law or order of public service commission.

Civil penalty, §26-2-102.

Public service commission.

Taxation of property, privileges and franchises, §§26-24-101 to 26-24-123.

PROPERTY TAXES.**Action of board.**

Appeals to courts, §26-27-318.

**PROPERTY TAXES —Cont'd
Actions.**

Assessors or board of equalization

failing to list and value property.

Civil action in name of state, §26-2-106.

Adjustment of taxes.

Assessments.

Applicability of subchapter, §26-26-401.

Assessed value data.

Certification, §26-26-403.

Certification.

Assessed value data, §26-26-403.

Form, §26-26-404.

Computation, §26-26-404.

Different types and uses of property.

Valuation, §26-26-407.

Education.

Fringe school districts.

Implementation of millage rollback, §26-26-408.

Forms.

Certification form, §26-26-404.

Personal property interim millage adjustment, §26-26-405.

Tax adjustment procedure, §26-26-406.

Millage rollback.

Fringe school districts.

Implementation, §26-26-408.

Personal property interim millage adjustments, §26-26-405.

Form, §26-26-405.

Procedure for adjustment,

§§26-26-402, 26-26-406.

Form, §26-26-406.

Reappraisal or reassessment.

Applicability of subchapter, §26-26-401.

Procedure for adjustment, §26-26-402.

Rules and regulations, §26-26-409.

School districts.

Millage rollback.

Implementation in fringe school districts, §26-26-408.

Tax adjustment procedure,

§§26-26-402, 26-26-406.

Form, §26-26-406.

Valuation.

Different types and uses of property, §26-26-407.

Property equalized by board.

Applications for, §26-27-317.

Agriculture.

Assessments, §26-26-1108.

PROPERTY TAXES —Cont'd**Appeals, §26-27-318.****Assessments.**

Petition for review of tax assessment.

Attorney general to serve as chief counsel for tax division, §26-26-101.

Notice to attorney general, §26-26-101.

Equalization of assessments.

County equalization boards.

Action of board, §26-27-318.

Special sessions of equalization boards, §26-27-311.

Evidence.

Evidence corroborative of owner required, §26-27-318.

Exhaustion of remedies before board.

Required, §26-27-318.

Filing.

Time appeals must be filed, §26-27-318.

Forms.

Form, §26-27-318.

Notice, §26-27-318.

Homestead credits.

Determination of violations, §26-26-1119.

Prosecuting attorneys.

Representation of county or state, §26-27-318.

Arkansas property taxpayer bill of rights, §26-23-201 to 26-23-205.**Assessments.****Abstract of tracts and lots.**

Exempt lands to be abstracted, §26-26-703.

Furnishing to county assessor.

Duty of clerks of county courts, §26-26-702.

Actions.

Failure to list and value property.
Civil action in name of state, §26-2-106.

Adjustment of taxes.

Applicability of subchapter, §26-26-401.

Assessed value data.

Certification, §26-26-403.

Certification.

Assessed value data, §26-26-403.

Form, §26-26-404.

Computation, §26-26-404.**Different types and uses of property.**

Valuation, §26-26-407.

PROPERTY TAXES —Cont'd**Assessments —Cont'd****Adjustment of taxes —Cont'd****Education.**

Fringe school districts.

Implementation of millage rollback, §26-26-408.

Forms.

Certification form, §26-26-404.

Personal property interim millage adjustment, §26-26-405.

Millage rollback.

Fringe school districts.

Implementation, §26-26-408.

Personal property interim millage adjustments, §26-26-405.

Form, §26-26-405.

Procedure for adjustment, §26-26-402, 26-26-406.

Form, §26-26-406.

Reappraisal or reassessment.

Applicability of subchapter, §26-26-401.

Procedure for adjustment, §26-26-402.

Revision.

Tax adjustment procedure, §26-26-406.

Rules and regulations, §26-26-409.**School districts.****Millage rollback.**

Implementation in fringe school districts, §26-26-408.

Tax adjustment procedure, §26-26-402, 26-26-406.

Form, §26-26-406.

Valuation.

Different types and uses of property, §26-26-407.

Agricultural lands annexed by city or town, §26-26-1108.

Definition of "agricultural lands," §26-26-1108.

Appeals.

Petition for review of tax assessment.

Attorney general to serve as chief counsel for tax division, §26-26-101.

Notice to attorney general, §26-26-101.

Apportionment of realty taxes, §26-26-1115.

Assessors.

Computerized tax assessment and collection.

Duties of county assessor, §26-28-303.

PROPERTY TAXES —Cont'd**Assessments —Cont'd****Assessors —Cont'd**

Deputy county assessors.

Authorized for assessing personal property, §26-26-502.

Failure to list and value property.

Civil action in name of state, §26-2-106.

Limitation of action.

Civil action in name of state, §26-2-106.

Penalty, §26-2-106.

Service of summons.

Civil action in name of state, §26-2-106.

Venue.

Civil action in name of state, §26-2-106.

House-to-house canvass of county.

Special list of omitted property, §26-26-913.

Information gathered by.

Retention, §26-26-715.

Inspections, §§26-26-715, 26-26-910.

Personnel employed to appraise property.

Certification, §26-26-503.

Required, §26-26-503.

Training, §26-26-503.

Advice of legislative council on criteria, §26-26-503.

Reports, §26-26-716.

Total assessments reported to board of equalization, §26-26-1103.

Total assessments reported to commission, §26-26-1103.

Township and ward of taxpayer to be shown, §26-26-716.

Right of entry, §26-26-910.

Blanks.

Assessor to furnish upon application, §26-26-901.

Building permits.

City clerk to file list, §26-26-707.

Cable television systems.

Defined, §26-26-1801.

Jurisdiction of public service commission, §26-26-1802.

Rules and regulations, §26-26-1803.

Churches.

Property used for other than church purposes, §26-26-1113.

Complaints.

Reassessment, §26-26-1301.

PROPERTY TAXES —Cont'd**Assessments —Cont'd**

Completion of appraisal.

Date county collector's books open for collection on newly appraised value, §26-26-311.

Computerized tax assessment and collection, §§26-28-301 to 26-28-308.

Corporations.

Definitions, §26-26-1502.

Intent of subchapter, §26-26-1501.

Listing of corporate property.

Who to list, §26-26-904.

Purposes of subchapter, §26-26-1501.

Statement of capital stock.

Notice of filing, §26-26-1505.

Penalty for failure to file, §26-26-1505.

Required, §26-26-1505.

County assessors.

Failure or neglect to make appraisals.

Conviction no bar to punishment for perjury, §26-2-105.

Penalty, §26-2-105.

Credits.

Lists.

Credits and stocks which need not be listed, §26-26-909.

Date of valuation, §26-26-1201.

Definitions, §§26-1-101, 26-26-1122.

Agricultural lands, §26-26-1108.

Corporations and financial institutions, §26-26-1502.

Housing for elderly or individuals with disabilities, §26-26-1206.

Delinquent assessments.

Penalties, §26-26-201.

Willful delinquency, §26-26-201.

Unavoidable failure to list property.

Filing of statement, §26-26-914.

Description of property.

Refusal to give.

Penalty, §26-26-202.

Determination of millage rollback, §26-26-1121.

Disabilities, individuals with, §26-26-1120.

Employee names.

Furnishing to assessors or collectors on demand, §26-26-712.

Equalization of assessments, §§26-27-301 to 26-27-321.

Executors and administrators.

Listing property of estate, §26-26-904.

PROPERTY TAXES —Cont'd**Assessments —Cont'd**

Extension of taxes, §26-28-103.

Fiduciaries.

Listing of property.

Duties, §26-26-904.

Financial institutions.

Assessments, §26-26-1504.

Definitions, §26-26-1502.

Intent of subchapter, §26-26-1501.

Personal property, §26-26-1503.

Purposes of subchapter,
§26-26-1501.

Real property, §26-26-1504.

Statement of capital stock.

Notice of filing, §26-26-1505.

Penalty for failure to file,
§26-26-1505.

Required, §26-26-1505.

Forms.

Furnishing, §26-26-901.

Greenbelt law, §26-26-1108.

Guardians.

Listing property of ward,
§26-26-904.

Hearings.

Reassessment, §26-26-1301.

Utilities and carriers, §26-26-1609.

Housing for elderly or individuals with
disabilities.

Definitions, §26-26-1206.

Method of valuation, §26-26-1206.

Improvements, §26-26-1107.

State highway commission or state
highway and transportation
department.

Property exempt from assessment,
§26-3-308.

Inquiries to makers or lists,
§26-26-911.

Leases.

Listing of property.

Certain leaseholds and lands
considered personal property,
§26-26-905.

Limitation of actions.

Failure to list and value property.

Civil action in name of state,
§26-2-106.

Limitation on increase of property's
assessed value, §26-26-1118.

Lists.

Blanks.

Furnishing upon application,
§26-26-901.

Building permits, §26-26-707.

Corporations.

Assets in hands of receivers.

Receivers to list, §26-26-904.

PROPERTY TAXES —Cont'd**Assessments —Cont'd**

Lists —Cont'd

Date of filing, §26-26-713.

Disabilities, individuals with.

Who to list property of persons
under disability, §26-26-904.

Disposition, §26-26-713.

Failure of officials to perform
duties as to, §26-26-713.

Executors and administrators.

Listing of estate of deceased
persons, §26-26-904.

Exempt real property, §26-26-1001.

Procedure on omission from list,
§26-26-1002.

Failure to list and value property.

Penalty, §26-2-106.

Fiduciaries.

Duties, §26-26-904.

Forms.

Furnishing, §26-26-901.

Prepared by commission,
§26-26-713.

Furnishing, §26-26-701.

Guardians.

Listing property of ward,
§26-26-904.

Information required of makers of
lists, §26-26-911.

Leases.

Certain leaseholds and lands
considered personal property,
§26-26-905.

Mentally ill.

Persons to list property,
§26-26-904.

Mineral deeds.

Recorder to file, §26-26-708.

Minors.

Persons to list property,
§26-26-904.

Mortgages.

Recorder to file, §26-26-708.

Motor vehicle licenses.

Persons and businesses securing,
§26-26-706.

Oath of persons listing property for
taxation, §26-26-902.

Omitted property.

Special list, §26-26-913.

Owner to list property, §26-26-903.

Pawnbrokers to list pledged
property, §26-26-906.

Penalties.

Failure to list and value property,
§26-2-106.

PROPERTY TAXES —Cont'd**Assessments —Cont'd****Lists —Cont'd**

Preservation of assessment lists,
§26-26-714.

Receivers.

Listing property of corporations
whose assets are in hands of
receiver, §26-26-904.

Representatives, §26-26-904.

Sale of land for taxes.

Tax sold lands assessed in name
of purchaser, §26-26-907.

Securities.

Property converted into
nontaxable securities,
§26-26-908.

Stock and stockholders.

Credits and stocks which need not
be listed, §26-26-909.

Tax-forfeited lands.

Assessor to obtain list, §26-26-721.

Timber deeds and contracts.

Recorder to file, §26-26-708.

Trustees.

Listing of property held in trust,
§26-26-904.

Unavoidable failure to list property.

Filing of statement, §26-26-914.

Valuations in listings not conclusive,
§26-26-910.

Mail.

Assessment of personal property
taxes by mail, §26-26-1114.

Mandamus.

Compelling performance of duties by
officers, §26-26-301.

Manufactured homes.**Purchase.**

Report to tax assessor,
§26-26-1105.

Manufacturers.

Valuation by, §26-26-1205.

Market value.

Percentage of value to be used in
appraisal, §26-26-303.

Rules for valuation generally,
§26-26-1202.

Mentally ill.**Listing of property.**

Persons responsible for listing,
§26-26-904.

Merchants.

Valuation by, §26-26-1203.

Accounts and notes included in
merchant's valuation,
§26-26-1204.

PROPERTY TAXES —Cont'd**Assessments —Cont'd****Mines and minerals.****List of mineral deeds.**

Recorder to file, §26-26-708.

Mineral and surface estates owned
by same person, §26-26-1111.

Mineral rights, §26-26-1110.

Mineral and surface estates owned
by same person, §26-26-1111.

Separate records for severed
mineral interests,
§26-26-1112.

Separate assessment of mineral
rights.

County assessor to maintain
separate records, §26-26-1112.

Minors.**Listing of property.**

Persons responsible for listing,
§26-26-904.

Misdemeanors.**Corporations.**

Statement of capital stock.

Failure to file, §26-26-1505.

County assessor failing or neglecting
to make appraisals.

High misdemeanor, §26-2-105.

Delinquent assessments.

Willful delinquency, §26-26-201.

Financial institutions.

Statement of capital stock.

Failure to file, §26-26-1505.

Motor vehicles.

List of persons and businesses
securing motor vehicle
licenses.

Violations of provisions,
§26-26-706.

Stock and stockholders.

Statement of capital stock.

Failure to file, §26-26-1505.

Mobile homes.

Home deemed real property,
§26-3-203.

Purchase.

Report to tax assessor,
§26-26-1105.

Mortgages and deeds of trust.**List of mortgages.**

Recorder to file, §26-26-708.

Motor vehicles.

Dealer inventory, §26-26-1207.

List of persons and businesses
securing motor vehicle licenses,
§26-26-706.

Confidentiality, §26-26-706.

PROPERTY TAXES —Cont'd**Assessments —Cont'd****Motor vehicles —Cont'd**

List of persons and businesses
securing motor vehicle licenses
—Cont'd

Penalties for violations of
provisions, §26-26-706.

Name.

Refusal to give.

Penalty, §26-26-202.

Notice.**Corporations.**

Statement of capital stock.

Notice to file, §26-26-1505.

Financial institutions.

Statement of capital stock.

Notice to file, §26-26-1505.

**Petition for review of tax
assessment.**

Notice to attorney general,
§26-26-101.

**Reappraisal or reassessment,
§26-26-1307.****Reassessment.**

Hearing, §26-26-1301.

Stock and stockholders.

Statement of capital stock.

Notice to file, §26-26-1505.

Utilities and carriers, §26-26-1610.**Oaths.**

Listing property for taxation,
§26-26-902.

Reassessment.

Appointees, §26-26-1302.

Omitted property.

Special lists, §26-26-913.

Orders.

Reassessment, §26-26-1301.

Owners of property.**Lists.**

Owners to list, §26-26-903.

**Pawnbrokers to list pledged property,
§26-26-906.****Penalties.****Corporations.**

Statement of capital stock.

Failure to file, §26-26-1505.

**County assessor failing or neglecting
to make appraisals, §26-2-105.****Delinquent assessments, §26-26-201.**

Willful delinquency, §26-26-201.

**Disposition of property to avoid
assessment, §26-2-107.****Employees names.**

Failure to furnish to assessor or
collector on demand,
§26-26-712.

PROPERTY TAXES —Cont'd**Assessments —Cont'd****Penalties —Cont'd**

Failure to list and value property,
§26-2-106.

Financial institutions.

Statement of capital stock.

Failure to file, §26-26-1505.

Lists.

Duties of officials as to disposition.

Failure to perform, §26-26-713.

Failure to list and value property,
§26-2-106.

Motor vehicles.

List of persons or businesses
securing motor vehicle
licenses.

Violations of provisions,
§26-26-706.

Name or description of property.

Refusal to give, §26-26-202.

Personal property.

Failure or refusal to assess or pay
taxes, §26-26-1406.

Stock and stockholders.

Statement of capital stock.

Failure to file, §26-26-1505.

Valuation.

Failure to list and value property,
§26-2-106.

Violation of law governing
assessments, §26-2-104.

Personal property.

Deputy county assessors for
assessing, §26-26-502.

Financial institutions, §26-26-1503.**Intangible personality.**

Assessor not liable for failure to
discover, §26-26-1104.

Leaseholds and lands.

Certain leaseholds and lands
considered personal property,
§26-26-905.

Mail.

Assessments by mail, §26-26-1114.

Rules for valuation, §26-26-1202.**Tangible personal property.**

Place of assessment, §26-26-1102.

Time for assessment and payment
of taxes, §§26-26-1401 to
26-26-1408.

Telephones.

Assessments by telephone,
§26-26-1114.

Time for assessment and payment of
taxes on tangible personal
property.

Applicability of subchapter,
§26-26-1402.

PROPERTY TAXES —Cont'd**Assessments —Cont'd**

Personal property —Cont'd

Time for assessment and payment of taxes on tangible personal property —Cont'd

Construction and interpretation.

Rights of taxpayers and responsibilities of county officials not restricted, §26-26-1405.

Supplemental nature of provisions, §26-26-1404.

Division of legislative audit.

Assistance to county officials, §26-26-1407.

Effective date of subchapter, §26-26-1403.

Forms, §26-26-1407.

Generally, §26-26-1408.

Legislative declaration, §26-26-1401.

Penalties.

Failure or refusal to assess or pay, §26-26-1406.

Purpose of provisions, §26-26-1401.

Supplemental nature of act, §26-26-1404.

Petitions.

Review of tax assessment.

Attorney general to serve as chief counsel for tax division, §26-26-101.

Notice of petition to attorney general, §26-26-101.

Place of assessment, §26-26-1102.

Public service commission.

Cable television systems, §26-26-1801 to 26-26-1803.

Lists, blanks and records.

Furnishing, §26-26-701.

Ratio of assessed value to market value, §26-26-304.

Real property.

Agricultural lands annexed by city or town, §26-26-1108.

Definition of "agricultural lands," §26-26-1108.

Annual assessment, §26-26-1101.

Apportionment of realty taxes, §26-26-1115.

Change of status of property, §26-26-1107.

Conveyances.

Address of grantee and description of improvements.

Furnishing to recorder, §26-26-709.

PROPERTY TAXES —Cont'd**Assessments —Cont'd**

Real property —Cont'd

Damaged property, §26-26-1107.

Description.

Correction of errors.

Descriptions already on books, §26-26-720.

Duties of assessors, §§26-26-718, 26-26-719.

Removal from office for failure to perform duties, §26-26-719.

Incomplete description.

Procedure, §26-26-719.

Method of obtaining, §26-26-717.

Exempt lands to be abstracted, §26-26-703.

Exempt property.

List, §26-26-1001.

Procedure on omission from list, §26-26-1002.

Noting on assessment roll, §26-26-718.

Financial institutions, §26-26-1504.

Improvements, §26-26-1107.

Land book, §26-26-704.

Lease.

Certain leaseholds considered personal property of person holding, §26-26-905.

Limitation on increase, §26-26-1118.

Place of assessment, §26-26-1102.

Rules for valuation, §26-26-1202.

Sale of land for taxes.

Tax sold lands assessed in name of purchaser, §26-26-907.

State and federally owned land.

List to be procured by county court, §26-26-704.

Tax-forfeited lands.

Assessor to obtain list of, §26-26-721.

Entry on assessment record, §26-26-721.

Uniform system of real property assessment.

Ad valorem tax, applicability, §26-26-1908.

Arkansas real property reappraisal fund, §26-26-1907.

Assessment coordination department, authority, §26-26-1911.

Computer-assisted mass appraisal systems, §26-26-1906.

Definitions, §26-26-1901.

PROPERTY TAXES —Cont'd**Assessments —Cont'd****Real property —Cont'd**

Uniform system of real property
assessment —Cont'd

Objectives of provisions,
§26-26-1904.

Previous requirements, relation to,
§26-26-1909.

Reappraisal, §26-26-1902.

Arkansas real property
reappraisal fund,
§26-26-1907.

Criteria, §26-26-1903.

Rules relating to procedures,
§26-26-1905.

Scope of provisions, §26-26-1910.

Reappraisal or reassessment.

Adjustment of taxes, §§26-26-401 to
26-26-409.

Appointees.

Authority, §26-26-1303.

Compensation, §26-26-1304.

Oaths, §26-26-1302.

Powers, §26-26-1303.

Qualifications, §26-26-1302.

Compensation.

Appointees, §26-26-1304.

Complaint.

Hearing upon, §26-26-1301.

Order upon, §26-26-1301.

Countywide reappraisal of property,
§26-26-306.

Completion of reappraisal,
§26-26-307.

Rules and regulations, §26-26-308.

Effect of reassessment, §26-26-1305.

Expenses.

Liability, §26-26-1306.

Hearings, §26-26-1301.

Notice, §26-26-1301.

Liability for expenses, §26-26-1306.

Notice, §26-26-1307.

Hearings, §26-26-1301.

Oaths.

Appointees, §26-26-1302.

Orders, §26-26-1301.

Original assessment.

Reassessment treated as,
§26-26-1305.

Powers.**Appointees.**

Generally, §26-26-1303.

Qualifications of appointees,
§26-26-1302.

Uniform system of real property
assessment, §§26-26-1902,
26-26-1903, 26-26-1905,
26-26-1907.

PROPERTY TAXES —Cont'd**Assessments —Cont'd****Receivers.**

Listing property of corporation
whose assets are in hands of
receiver, §26-26-904.

Records.

Assessment records to be kept
current, §26-26-302.

Reports.

Assessors, §26-26-716.

Total assessments reported to
boards of equalization,
§26-26-1103.

Total assessments reported to
commission, §26-26-1103.

Township and ward of taxpayer to
be shown, §26-26-716.

Rules and regulations.

Adjustment of taxes, §26-26-409.

Rules for valuation, §26-26-1202.

Sale of property, §26-26-1123.

School districts.

List of taxpayers.

School directors to furnish,
§26-26-705.

Securities.

Property converted into nontaxable
securities.

Duty to list, §26-26-908.

Senior citizens, §26-26-1120.

Housing for elderly or individuals
with disabilities, §26-26-1206.

Service of process.

Failure to list and value property.
Civil action in name of state,
§26-2-106.

State highway and transportation
department.

Improvement district assessments.

Exemption from assessment,
§26-3-308.

State highway commission.

Improvement district assessments.
Exemption from assessment,
§26-3-308.

Stock and stockholders.**Lists.**

Credits and stocks which need not
be listed, §26-26-909.

Statement of capital stock.

Notice of filing, §26-26-1505.

Penalty for failure to file,
§26-26-1505.

Required, §26-26-1505.

Subdivisions.

Platting for assessment purposes.

Compensation of officials,
§26-26-804.

PROPERTY TAXES —Cont'd**Assessments —Cont'd****Subdivisions —Cont'd**

Platting for assessment purposes
—Cont'd

Designation of tracts, §26-26-803.

Generally, §26-26-802.

Orders of county courts,
§26-26-802.

Notice to surveyors, §26-26-801.

Summons.

Failure to list and value property.

Civil action in name of state.

Service of summons, §26-2-106.

Telephones.

Assessment of personal property
taxes by telephone, §26-26-1114.

Television.

Cable television systems,
§§26-26-1801 to 26-26-1803.

Trees and timber.

List of timber deeds and contracts.

Recorder to file, §26-26-708.

Timber rights, §26-26-1109.

Trusts and trustees.

Listing of property by trustee,
§26-26-904.

Utilities and carriers.

Apportionment of assessed value to
counties and districts,
§26-26-1611.

Assessment meetings, §26-26-1605.

Average tax rate.

Determination, §26-26-1615.

Collection of tax assessed,
§26-26-1614.

Private cars, §26-26-1706.

Disposition of taxes and penalties,
§26-26-1616.

Hearing prior to assessment,
§26-26-1609.

Late payment.

Penalties, §26-26-1614.

Revocation of certificate or permit,
§26-26-1614.

Notice of assessment, §26-26-1610.

Penalties.

Delinquency in filing statement,
§26-26-1604.

Late payment, §26-26-1614.

Private cars.

Delinquency, §26-26-1706.

Deposit of penalties in state
treasury, §26-26-1707.

Failure to make statement,
§26-26-1704.

Private cars.

Collection of tax, §26-26-1706.

PROPERTY TAXES —Cont'd**Assessments —Cont'd****Utilities and carriers —Cont'd****Private cars —Cont'd**

Definition of private car company,
§26-26-1701.

Disposition of taxes and penalties,
§26-26-1707.

Levy of tax, §26-26-1706.

Penalties.

Delinquency, §26-26-1706.

Deposit of penalties in state
treasury, §26-26-1707.

Failure to make statement,
§26-26-1704.

Reports.

Owners, §26-26-1702.

Penalty for failure to make
statement, §26-26-1704.

Railroads to report mileage,
§26-26-1703.

Valuation and assessment,
§26-26-1705.

Property not used in utility
operation, §26-26-1613.

Reports.

Assessment when no report or
erroneous report filed,
§26-26-1608.

Delinquency in filing.

Penalty, §26-26-1604.

Revocation of certificate or
permit, §26-26-1604.

Information to be furnished,
§26-26-1603.

Private cars.

Owners, §26-26-1702.

Penalty for failure to make
statement, §26-26-1704.

Railroads to report mileage,
§26-26-1703.

Required, §26-26-1602.

Time for, §26-26-1602.

Review of assessment, §26-26-1610.

Scope of provisions.

Businesses included, §26-26-1601.

Valuation of property, §26-26-1606.

Certification to counties,
§26-26-1612.

Entry on record, §26-26-1612.

Method, §26-26-1607.

Private cars, §26-26-1705.

Valuation.**Adjustment of taxes.**

Different types and uses of
property, §26-26-407.

Effect.

Not conclusive, §26-26-910.

PROPERTY TAXES —Cont'd**Assessments —Cont'd****Valuation —Cont'd**

Failure to list and value property.

Penalty, §26-2-106.

Housing for elderly or individuals with disabilities, §26-26-1206.

Manufacturers.

Valuation by, §26-26-1205.

Merchants.

Valuation by, §26-26-1203.

Accounts and notes included in merchant's valuation, §26-26-1204.

Penalties.

Failure to list and value property, §26-2-106.

Rules for, §26-26-1202.

Venue.

Failure to list and value property.

Civil action in name of state, §26-2-106.

Banks.

Generally, §§26-26-1501 to 26-26-1505.

Property taxable, §26-3-201.

Bonds, surety.

Assessments.

Failure of officers to perform duties.

Liability on official bonds, §26-26-301.

Building and loan associations,

§§26-26-1501 to 26-26-1505.

Carriers.

Assessments.

Utilities and carriers, §§26-26-1601 to 26-26-1707.

Cemeteries.

Exempt property, §26-3-301.

Charities.

Exempt property, §26-3-301.

Collecting taxes not on books or in greater amount, §26-2-110.**Collection.**

Collectors.

Computerized tax assessment and collection.

Duties of county collector, §26-28-305.

Duties of tax collector, §26-28-304.

Final tax settlements, §26-28-306.

Records.

Maintenance of permanent record, §26-28-307.

Complaints.

Assessments.

Reassessment, §26-26-1301.

PROPERTY TAXES —Cont'd**Computerized tax assessment and collection.**

Authorization of use of alternative method, §§26-28-301, 26-28-302.

County assessor.

Duties, §26-28-303.

County treasurer.

Distribution of taxes, §26-28-308.

Distribution of taxes, §26-28-308.

Final tax settlement, §26-28-306.

Legislative intent, §26-28-301.

Ordinance authorizing use of alternative method, §§26-28-301, 26-28-302.

Preparer of tax books.

Commission, §26-28-307.

Duties, §26-28-304.

Tax collector.

Duties, §§26-28-304, 26-28-305.

Final tax settlements, §26-28-306.

Records.

Maintenance of permanent record, §26-28-306.

Corporations.

Assessments.

Statement of capital stock.

Required, §26-26-1505.

Who to list corporate property, §26-26-904.

Definitions, §26-26-1502.

Intent of subchapter, §26-26-1501.

Misdemeanors.

Statement of capital stock.

Failure to file, §26-26-1505.

Notice.

Statement of capital stock.

Notice of filing, §26-26-1505.

Penalties.

Statement of capital stock.

Failure to file, §26-26-1505.

Property taxable, §26-3-201.

Purposes of subchapter, §26-26-1501.

Statement of capital stock.

Notice of filing, §26-26-1505.

Penalty for failure to file,

§26-26-1505.

Required, §26-26-1505.

Counties.

Computerized tax assessment and collection.

Ordinances authorizing use of alternative method, §§26-28-301, 26-28-302.

Countywide reappraisal of property.

Completion, §26-26-307.

Generally, §26-26-306.

Rules and regulations, §26-26-308.

PROPERTY TAXES —Cont'd**Counties —Cont'd**

- Rate of tax.
- Limitations, §26-25-101.
- Reappraisals, §26-26-1308.

Credits.

- Assessments.
- Lists.
 - Credits and stocks which need not be listed, §26-26-909.
- Defined, §26-1-101.
- Homestead property tax credit, §26-26-1118.
- Penalty for claiming more than one credit, §26-26-1119.

Data processing.

- Records.
- Electronic data processing equipment, §26-28-102.

Definitions, §26-1-101.

- Assessments, §26-26-1122.
- Agricultural lands, §26-26-1108.
- Housing for elderly or individuals with disabilities, §26-26-1206.
- Cable television systems, §26-26-1801.

Disabilities, individuals with.

- Assessments.
- Relief, §26-26-1124.

Education.

- Adjustment of taxes.
- Fringe school districts.
- Implementation of millage rollback, §26-26-408.

- Exempt property, §26-3-301.

Equalization of assessments.

- Abstract of tax books.
- Filing with state equalization board, §26-27-321.
- Adjustments.
 - Adjusted assessment entered on record, §26-27-320.
 - Orders, §26-27-204.
- Appeals.
 - County equalization boards.
 - Action of board, §26-27-318.
- Evidence.
 - Corroborative evidence required, §26-27-318.
- Forms.
 - Notice of appeal, §26-27-318.
- Special sessions of equalization boards, §26-27-311.
- Assessors.
 - Attendance at meetings of equalization board, §26-27-313.
- Authority.
 - Public service commission, §26-27-201.

PROPERTY TAXES —Cont'd**Equalization of assessments —Cont'd**

- County equalization boards, §26-27-306.
- Abstract of tax books.
- Filing with state equalization board, §26-27-321.
- Adjustments.
 - Adjusted assessment entered on record, §26-27-320.
- Applications, §26-27-317.
- Appeals from, §26-27-311.
- Special sessions, §26-27-311.
- Appointment of members.
 - Time county judge to make appointment, §26-27-304.
- Assessors.
 - Attendance at meetings of boards, §26-27-313.
- Authority, §§26-27-301, 26-27-314.
- Basis of valuation adopted by board.
 - Statement, §26-27-319.
- Chairman.
 - Administration of oaths to witnesses.
 - Power, §26-27-309.
 - Election, §26-27-309.
- Change in market values, procedures, §26-27-322.
- Classification of property.
 - Powers, §26-27-314.
- Clerks of county court.
 - Secretary of board, §26-27-307.
- Compensation of members, §26-27-308.
- Composition, §26-27-303.
 - Three member boards, §26-27-303.
 - Five member boards, §26-27-303.
 - Nine member boards, §26-27-303.
- County clerk.
 - Secretary of board, §26-27-307.
- Creation, §26-27-301.
- Exercise of functions as board of equalization.
 - Time for board to exercise, §26-27-309.
- Expenses of members, §26-27-308.
- Familiarity with property values in county.
 - Qualifications of board members, §26-27-302.
- Meetings, §26-27-309.
 - Attendance by assessors.
 - Imperative duties, §26-27-313.
 - Exercise of functions as board of equalization, §26-27-309.
- Members, §26-27-304.
- Terms, §26-27-305.

PROPERTY TAXES —Cont'd**Equalization of assessments —Cont'd**

County equalization boards —Cont'd

Oath of members, §26-27-309.

Personal property.

Authority to classify, §26-27-314.

Powers, §26-27-301.

Qualifications, §26-27-302.

Qualified electors.

Qualifications of board members,
§26-27-302.

Quorum, §26-27-309.

Real estate owners.

Qualifications of board members,
§26-27-302.

Real property.

Authority to zone and classify,
§26-27-314.

Records.

Access to public records,
§26-27-316.Adjusted assessment entered on
record, §26-27-320.

Resolution of valuation.

Adoption by board, §26-27-319.

Right of entry, §26-27-316.

Rules required to be followed,
§26-27-315.

Secretary of board.

Clerk of county court, §26-27-307.

Compensation, §26-27-308.

Selection of members.

Three member boards, §26-27-304.

Five member boards, §26-27-304.

Nine member boards, §26-27-304.

Special sessions, §26-27-311.

Appeals from, §26-27-311.

Expenses, §26-27-311.

Special session for purpose of
planning work, §26-27-312.

Planning work, §26-27-312.

Expenses, §26-27-312.

Terms of office.

Three member boards, §26-27-305.

Five member boards, §26-27-305.

Nine member boards, §26-27-305.

Vacancies in office, §26-27-305.

Witnesses.

Powers as to, §26-27-316.

Working groups.

Nine member boards, §26-27-310.

Selection of chairman,
§26-27-310.

Zoning of property.

Powers, §26-27-314.

Evidence.

Appeals.

Corroborative evidence required,
§26-27-318.**PROPERTY TAXES —Cont'd****Equalization of assessments —Cont'd**

Forms.

Appeals.

Notice of appeal, §26-27-318.

Guidelines, §26-27-315.

State equalization board,
§26-27-203.

Notice, §26-27-315.

Appeals.

Form, §26-27-318.

Orders of adjustment, §26-27-204.

Penalties.

Violation of law governing
equalization, §26-2-104.

Personal property.

County equalization boards.

Authority to classify, §26-27-314.

Prosecuting attorneys.

Appeals.

Representation of county or state,
§26-27-318.

Public service commission.

Authority, §26-27-201.

Real property.

County equalization boards.

Authority to zone and classify,
§26-27-314.

Records.

Adjusted assessment entered on
record, §26-27-320.

County equalization boards.

Access to public records,
§26-27-316.State equalization board,
§26-27-204.

State equalization board.

Abstract of tax books.

Filing with state equalization
board, §26-27-321.

Guidelines for valuation, §26-27-203.

Meetings, §26-27-202.

Purposes, §26-27-202.

Orders of adjustment, §26-27-204.

Public service commission
constitutes, §26-27-201.

Record of proceedings, §26-27-204.

Witnesses.

Powers of county equalization
boards as to, §26-27-316.**Executors and administrators.**

Assessments.

Listing property of estate,
§26-26-904.**Exemptions, §26-3-301.**

Abstract of tracts and lots.

Exempt lands to be abstracted,
§26-26-703.

PROPERTY TAXES —Cont'd**Exemptions —Cont'd**

Churches, §26-3-301.

Property used for other than church purposes, §26-3-206.

Disabled veterans, §26-3-306.

Intangible personalty, §26-3-302.

Parsonages, §26-3-303.

Textile mills, §26-3-304.

Veterans.

Disabled veterans, §26-3-306.

Fiduciaries.

Assessments.

Duties as to listing property, §26-26-904.

Financial institutions.

Assessments.

Personal property, §26-26-1503.

Real property, §26-26-1504.

Statement of capital stock.

Required, §26-26-1505.

Definitions, §26-26-1502.

Intent of subchapter, §26-26-1501.

Misdemeanors.

Statement of capital stock.

Failure to file, §26-26-1505.

Notice.

Statement of capital stock.

Notice of filing, §26-26-1505.

Penalties.

Statement of capital stock.

Failure to file, §26-26-1505.

Personal property.

Assessments, §26-26-1503.

Purposes of subchapter, §26-26-1501.

Real property.

Assessments, §26-26-1504.

Statement of capital stock.

Notice of filing, §26-26-1505.

Penalty for failure to file, §26-26-1505.

Required, §26-26-1505.

Fires and fire prevention.

Exemption of fire engines and other implements, §26-3-301.

Forms.

Adjustment of taxes.

Certification form, §26-26-404.

Personal property interim millage adjustment, §26-26-405.

Tax adjustment procedure, §26-26-406.

Appeals.

Notice of appeal, §26-27-318.

Assessments.

Furnishing, §26-26-901.

Equalization of assessments.

County equalization boards.

Notice of appeal, §26-27-318.

PROPERTY TAXES —Cont'd**Forms —Cont'd**

Records.

Correction of errors, §26-28-111.

Greenbelt law, §26-26-1108.

Guardians.

Assessments.

Listing property of wards, §26-26-904.

Hearings.

Assessments.

Reassessment, §26-26-1301.

Utilities and carriers, §26-26-1609.

Highways.

Property owned by state highway commission or state highway and transportation department.

Exemption from improvement district assessments, §26-3-308.

Improvement districts.

Assessments.

State highway commission or state highway and transportation department.

Property exempt from assessment, §26-3-308.

Improvements.

Assessments, §26-26-1107.

State highway commission or state highway and transportation department.

Property exempt from assessment, §26-3-308.

Inspections.

Assessments.

Assessors, §26-26-910.

Leases.

Assessments.

Listing of property.

Certain leaseholds considered personal property, §26-26-905.

Levy of taxes.

Cities one mile from state line.

State tax levy in, §26-25-104.

Objections to levy, §26-25-105.

Voluntary tax.

Use for purposes other than that for which levied.

Prohibited, §26-25-106.

Removal of county officials for violations, §26-25-106.

Limitation of actions.

Assessments.

Assessors or board of equalization failing to list and value property, §26-2-106.

Homestead credit.

Appeal of determination of violation, §26-26-1119.

PROPERTY TAXES —Cont'd**Mail.**

Assessment of personal property taxes
by mail, §26-26-1114.

Mandamus.

Assessments.

Compelling performance of duties by
officers, §26-26-301.

Mental health.

Assessments.

Listing of property.

Persons responsible for listing,
§26-26-904.

Mines and minerals.

Assessments.

List of mineral deeds.

Recorder to file, §26-26-708.

Mineral and surface estates owned
by same person, §26-26-1111.

Mineral rights, §26-26-1110.

Mineral and surface estates owned
by same person, §26-26-1111.

Separate records for severed
mineral interests,
§26-26-1112.

Separate assessment of mineral
rights.

County assessor to maintain
separate records, §26-26-1112.

Mineral and surface estate owned by
same person, §26-26-1111.

Minors.

Assessments.

Listing of property.

Persons responsible for listing,
§26-26-904.

Mobile homes.

Assessments.

Purchase of mobile home.

Report to tax assessor,
§26-26-1105.

Real property, §26-3-203.

Subject to taxation, §26-3-203.

Money.

Taxable property, §26-3-202.

Mortgages and deeds of trust.

Assessments.

List of mortgages.

Recorder to file, §26-26-708.

Motor vehicles.

Assessments.

List of persons and businesses
securing motor vehicle licenses,
§26-26-706.

Municipal corporations.

Basis of levy, §26-25-103.

Collection, §26-25-103.

PROPERTY TAXES —Cont'd**Municipal corporations —Cont'd**

Rate of taxes.

Limitations, §26-25-102.

State tax levy in cities one mile from
state line, §26-25-104.

Notice.

Appeals, §26-27-318.

Assessments.

Corporations.

Statement of capital stock.

Notice to file, §26-26-1505.

Financial institutions.

Statement of capital stock.

Notice to file, §26-26-1505.

Petition for review of tax
assessment.

Notice to attorney general,
§26-26-101.

Reappraisal or reassessment,
§26-26-1307.

Hearing, §26-26-1301.

Stock and stockholders.

Statement of capital stock.

Notice to file, §26-26-1505.

Utilities and carriers, §26-26-1610.

Equalization of assessments,
§26-27-315.

County equalization boards.

Appeals, §26-27-318.

Oaths.

Assessments.

Listing property for taxation,
§26-26-902.

Reassessment.

Appointees, §26-26-1302.

Equalization of assessments.

County equalization boards,
§26-27-306.

Orders.

Assessments.

Reassessment, §26-26-1301.

Equalization of assessments.

State equalization board.

Orders of adjustment, §26-27-204.

Pawnbrokers.

Assessments.

Pawnbrokers to list pledged
property, §26-26-906.

Payment of taxes.

Personal property.

Time for assessment and payment of
taxes, §§26-26-1401 to
26-26-1408.

Penalties.

Assessments.

Corporations.

Statement of capital stock.

Failure to file, §26-26-1505.

PROPERTY TAXES —Cont'd**Penalties —Cont'd****Assessments —Cont'd**

County assessor failing or neglecting to make appraisals, §26-2-105.

Delinquent assessments, §26-26-201.

Willful delinquency, §26-26-201.

Description of property.

Refusal to give, §26-26-202.

Disposition of property to avoid assessment, §26-2-107.

Employees' names.

Failure to furnish to assessor or collector on demand, §26-26-712.

Financial institutions.

Statement of capital stock.

Failure to file, §26-26-1505.

Lists.

Duties of officials as to disposition.

Failure to perform, §26-26-713.

Failure to list and value property, §26-2-106.

Motor vehicles.

List of persons or businesses securing motor vehicle licenses.

Violations of provisions, §26-26-706.

Personal property.

Failure or refusal to assess or pay taxes, §26-26-1406.

Stock and stockholders.

Statement of capital stock.

Failure to file, §26-26-1505.

Valuation.

Failure to list and value property, §26-2-106.

Violation of law governing assessments, §26-2-104.

Disposition of property to avoid assessment, §26-2-107.

Equalization of assessments.

Violation of law governing equalization, §26-2-104.

Exemptions.

Disabled veterans.

Violations of provisions, §26-3-306.

Name.

Refusal to give, §26-26-202.

Officials refusing or neglecting to perform duty, §26-2-108.

Officials violating or failing to comply with law, §26-2-101.

Violation of law or order of public service commission.

Civil penalty, §26-2-102.

PROPERTY TAXES —Cont'd**Personal property.**

Defined, §26-1-101.

Equalization of assessments.

County equalization boards.

Authority to classify, §26-27-314.

Extension of taxes, §26-28-103.

Financial institutions.

Assessments, §26-26-1503.

Intangible personality.

Assessments.

Assessor not liable for failure to discover intangible personality, §26-26-1104.

Exemption from ad valorem taxation, §26-3-302.

Payment of taxes.

Time for assessment and payment of taxes, §§26-26-1401 to 26-26-1408.

Taxable property, §26-3-201.

Time for assessment and payment of taxes on personal property, §§26-26-1401 to 26-26-1408.

Trees and timber.

Timber rights classed as personal property, §26-3-205.

Petitions.

Assessments.

Review of tax assessment.

Attorney general to serve as chief counsel for tax division, §26-26-101.

Notice of petition to attorney general, §26-26-101.

Property assessed by county assessor.

Applications for, §26-27-317.

Prosecuting attorneys.

Appeals.

Representation of county or state, §26-27-318.

Equalization of assessments.

County equalization boards.

Appeals of actions of board.

Representation of county or state, §26-27-318.

Public service commission.

Cable television systems, §§26-26-1801 to 26-26-1803.

Generally.

Taxation of property, privileges and franchises, §§26-24-101 to 26-24-123.

Lists, blanks and records.

Furnishing, §26-26-701.

Taxation of property, privileges and franchises, §§26-24-101 to 26-24-123.

PROPERTY TAXES —Cont'd**Public utilities.**

Assessments.

Utilities and carriers, §§26-26-1601 to 26-26-1707.

Rate of taxes.

Limitations.

County taxes, §26-25-101.

Municipal taxes, §26-25-102.

Real property.

Defined, §26-1-101.

Equalization of assessments.

County equalization boards.

Authority to zone and classify, §26-27-314.

Extension of taxes, §26-28-103.

Financial institutions.

Assessments, §26-26-1504.

Mobile homes deemed real property, §26-3-203.

Taxable property, §26-3-201.

Land sold by state, §26-3-204.

Reappraisal or reassessment.

Adjustment of taxes, §§26-26-401 to 26-26-409.

Generally, §§26-26-1301 to 26-26-1308.

Receivers.

Assessments.

Listing property of corporation whose assets are in hands of receiver, §26-26-904.

Records.

Assessments.

Assessment records to be kept current, §26-26-302.

Listing of parcels or assessments, §26-28-114.

Books.

Correction of errors, §26-28-111.

County clerk to prepare, §26-28-101.

Delivery to collector, §26-28-108.

Deposit of books in proper districts, §26-28-113.

Emergency petition to place tax or fee on books, §26-28-115.

Entry for omitted years, §26-28-105.

Errors.

Corrections, §26-28-111.

Forfeited lands.

How marked, §26-28-107.

Form of book, §26-28-101.

Forms.

Correction of errors, §26-28-111.

Judicial districts.

Books for two judicial districts, §26-28-112.

Listing of parcels or assessments, §26-28-114.

PROPERTY TAXES —Cont'd**Records —Cont'd**

Books —Cont'd

Omitted years.

Entry for, §26-28-105.

Preservation in office of county clerk, §26-28-110.

Public records, §26-28-110.

Recapitulation of taxes, §26-28-104.

Uncollected taxes.

Charging for, §26-28-106.

Correction of errors, §26-28-111.

Delivery of tax books to collector, §26-28-108.

Electronic data processing equipment, §26-28-102.

Emergency petition to place tax or fee on books, §26-28-115.

Equalization of assessments.

Adjusted assessment entered on record, §26-27-320.

County equalization boards.

Access to public records, §26-27-316.

State equalization board, §26-27-204.

Errors.

Correction, §26-28-111.

Extension of taxes, §26-28-103.

Forfeited lands.

How marked, §26-28-107.

Forms.

Correction of errors, §26-28-111.

Judicial districts.

Counties having two judicial districts.

Books kept for each district, §26-28-112.

Preservation of tax books in proper district, §26-28-113.

Preservation, §26-28-110.

Public records, §26-28-110.

Recapitulation of taxes, §26-28-104.

Uncollected taxes.

Charging for, §26-28-106.

Unit tax ledger system.

Certificates of assessment, §26-28-205.

Description, §26-28-202.

Effect of adoption, §26-28-203.

Installation, §26-28-201.

Transfers of real estate.

Recorded transfers certified to collector, §26-28-204.

Reduction.

Certification of amount, §26-26-310.

PROPERTY TAXES —Cont'd**Religion.**

Assessments.

Property used for other than church purposes, §26-26-1113.

Exempt property, §26-3-301.

Parsonages, §26-3-303.

Property used for other than church purposes, §26-3-206.

Reports.

Assessments.

Assessors, §26-26-716.

Total assessments reported to boards of equalization, §26-26-1103.

Total assessments reported to commission, §26-26-1103.

Township and ward of taxpayer to be shown, §26-26-716.

Right of entry.

Assessments.

Assessors, §26-26-910.

Rules and regulations.

Adjustment of taxes, §26-26-409.

Countywide reappraisal of property, §26-26-306.

Public service commission.

Cable television assessment, §26-26-1803.

Savings and loan associations,

§§26-26-1501 to 26-26-1505.

Securities.

Assessments.

Lists.

Property converted into nontaxable securities, §26-26-908.

Senior citizens.

Assessments.

Housing for elderly or individuals with disabilities, §26-26-1206.

Relief, §26-26-1124.

Service of process.

Failure to list and value property.

Civil action in name of state, §26-2-106.

State equalization board.

Abstract of tax books.

Filing with state equalization board, §26-27-321.

Guidelines for valuation, §26-27-203.

Meetings, §26-27-202.

Purposes, §26-27-202.

Orders of adjustment, §26-27-204.

Public service commission constitutes, §26-27-201.

Record of proceedings, §26-27-204.

PROPERTY TAXES —Cont'd**Stock and stockholders.**

Assessments.

Lists.

Credits and stocks which need not be listed, §26-26-909.

Statement of capital stock.

Notice to file, §26-26-1505.

Penalty for failure to file, §26-26-1505.

Required, §26-26-1505.

Investments in stocks.

Defined, §26-1-101.

Taxable, §26-3-201.

Subdivisions.

Assessments.

Platting subdivisions for assessment purposes, §§26-26-801 to 26-26-804.

Summons.

Failure to list and value property.

Civil action in name of state.

Service of summons, §26-2-106.

Taxable property, §26-3-201.

Land sold by state, §26-3-204.

Money, §26-3-202.

Taxpayer bill of rights, §§26-23-201 to 26-23-205.**Telephones.**

Assessment of personal property taxes by telephone, §26-26-1114.

Television.

Assessments.

Cable television systems, §§26-26-1801 to 26-26-1803.

Textile mills.

Exemption, §26-3-304.

Trees and timber.

Assessments.

List of timber deeds and contracts.

Recorder to file, §26-26-708.

Timber rights, §26-26-1109.

Personal property.

Timber rights classed as personal property, §26-3-205.

Trusts and trustees.

Assessments.

Trustee to list property held in trust, §26-26-904.

United States.

Exempt property, §26-3-301.

Unit tax ledger system, §§26-28-201 to 26-28-205.**Universities and colleges.**

Exempt property, §26-3-301.

Venue.

Failure to list and value property.

Civil action in name of state, §26-2-106.

PROPERTY TAXES —Cont'd**Veterans.**

Exemptions.

Disabled veterans, §26-3-306.

Water supply and waterworks.

Nonprofit property owners associations.

Exemption of waterworks owned by, §26-3-305.

Witnesses.

Equalization of assessments.

Powers of county equalization boards, §26-27-316.

PROPERTY TAXPAYER BILL OF**RIGHTS, §§26-23-201 to 26-23-205.****Citation of act, §26-23-201.****Notice.**

Annual notice to taxpayer concerning rights, §26-23-205.

Procedures, §26-23-203.

Purpose of act, §26-23-202.**Tax bill information, §26-23-204.****Title of act, §26-23-201.****PROSECUTING ATTORNEYS.****Property taxes.**

Equalization of assessments.

County equalization boards.

Appeals of actions of board.

Representation of county or state, §26-27-318.

PUBLIC OFFICERS AND EMPLOYEES.**Public service commission.**

Taxation of property, privileges and franchises.

Information from public officials.

Power of commission to require, §26-24-110.

PUBLIC SERVICE COMMISSION.**Actions.**

Taxation of property, privileges and franchises.

Power of commission to direct and approve, §26-24-109.

Agents.

Taxation of property, privileges and franchises.

Investigations, §26-24-115.

Appointment, §26-24-114.

Disclosure of information.

Penalty, §26-24-114.

Penalty.

Disclosure of information, §26-24-115.

Powers, §26-24-114.

PUBLIC SERVICE COMMISSION

—Cont'd

Appeals.

Taxation of property, privileges and franchises.

Assessments, §26-24-123.

Equalization, §26-24-123.

Public carriers.

Assessment of property, §26-24-101.

Public utilities.

Assessment of property, §26-24-101.

Contempt.

Taxation of property, privileges and franchises.

Failure to testify before commission, §26-24-122.

Witnesses.

Taxation.

Failure to testify before commission, §26-24-122.

Corporations.

Taxation of property, privileges and franchises.

Information from private persons or corporations.

Power of commission to require, §26-24-111.

Depositions.

Taxation of property, privileges and franchises.

Power of commission to cause, §26-24-113.

Divisions.

Assessment coordinate division.

Created, §26-24-101.

Tax division.

Created, §26-24-101.

Fees.

Taxation of property, privileges and franchises.

Witnesses, §26-24-122.

Franchises.

Taxation of property, privileges and franchises, §§26-24-101 to 26-24-123.

Governor.

Taxation of property, privileges and franchises.

Consultations with governor, §26-24-120.

Hearings.

Taxation of property, privileges and franchises.

Public carriers.

Assessment of property, §26-24-101.

PUBLIC SERVICE COMMISSION

—Cont'd

Hearings —Cont'd

Taxation of property, privileges and franchises —Cont'd

Public utilities.

Assessment of property,
§26-24-101.**Investigations.**

Taxation of property, privileges and franchises.

Agents, §26-24-115.

Appointment, §26-24-114.

Disclosure of information.

Penalty, §26-24-114.

Penalties.

Disclosure of information,
§26-24-114.

Powers, §26-24-114.

Commission, §26-24-116.

Tax systems, §26-24-119.

Local authorities.

Taxation of property, privileges and franchises.

Supervision, §26-24-105.

Notaries public.

Taxation of property, privileges and franchises.

Investigations by agents.

Powers given to, §26-24-114.

Opinions of commission.

Taxation of property, privileges and franchises, §26-24-106.

Penalties.

Taxation of property, privileges and franchises.

Investigations by agents.

Disclosure of information,
§26-24-114.**Perjury.**

Taxation of property, privileges and franchises.

Witnesses.

No exemption from prosecution,
§26-24-122.**Powers.**Assessment of utility property,
§26-24-103.

Basis of valuation, §26-24-104.

Consultation with governor,
§26-24-120.

Corporations.

Information.

Power to require, §26-24-111.

Depositions, §26-24-113.

Investigations, §§26-24-115, 26-24-116,
26-24-119.**PUBLIC SERVICE COMMISSION**

—Cont'd

Powers —Cont'd

Meetings of assessors.

Power to call, §26-24-118.

Omitted property.

Power to cause to be placed upon
assessment rolls, §26-24-117.

Private persons.

Information.

Power and authority to require,
§26-24-111.

Public officials.

Information.

Power and authority to require,
§26-24-110.

Reports.

Biennial reports, §26-24-121.

Witnesses, §26-24-112.

Privileges.Taxation of property, privileges and
franchises, §§26-24-101 to
26-24-123.**Property taxes.**Cable television systems, §§26-26-1801
to 26-26-1803.

Generally.

Taxation of property, privileges and
franchises, §§26-24-101 to
26-24-123.

Lists, blanks and records.

Furnishing, §26-26-701.

Taxation of property, privileges and
franchises, §§26-24-101 to
26-24-123.**Public officers and employees.**Taxation of property, privileges and
franchises.

Information from public officials.

Power of commission to require,
§26-24-110.**Reports.**Taxation of property, privileges and
franchises.

Biennial reports, §26-24-121.

Extension of time.

Power of commission to grant,
§26-24-108.**Rules and regulations.**Taxation of property, privileges and
franchises, §26-24-107.**Taxation of property, privileges and
franchises.**

Actions.

Collection of taxes.

Power of commission to direct and
approve, §26-24-109.

PUBLIC SERVICE COMMISSION

—Cont'd

Taxation of property, privileges and franchises —Cont'd

Agents.

Investigations, §26-24-115.

Appointment, §26-24-114.

Disclosure of information.

Penalties, §26-24-114.

Notaries public.

Powers given by law to,
§26-24-114.

Penalties.

Disclosure of information,
§26-24-114.

Powers, §26-24-114.

Appeals.

Assessments, §26-24-123.

Equalization, §26-24-123.

Public carriers.

Assessment of property,
§26-24-101.

Public utilities.

Assessment of property,
§26-24-101.

Assessments.

Appeals, §26-24-123.

Public carriers, §26-24-101.

Public utilities, §26-24-101.

Assessment coordinate division.

Created, §26-24-101.

Duties, §26-24-101.

Assessors.

Meetings of assessors, §26-24-118.

Hearings.

Public carriers, §26-24-101.

Public utilities, §26-24-101.

Omitted property.

Power of commission to cause to
be placed upon assessment
rolls, §26-24-117.

Power of commission, §26-24-102.

Public carriers.

Power of commission, §26-24-103.

Tax division.

Duties, §26-24-101.

Public utilities.

Appeals, §26-24-101.

Hearings, §26-24-101.

Power of commission, §26-24-103.

Tax division.

Duties, §26-24-101.

Tax division.

Duties, §26-24-101.

Authority.

Generally, §26-24-102.

PUBLIC SERVICE COMMISSION

—Cont'd

Taxation of property, privileges and franchises —Cont'd

Collection.

Actions.

Power of commission to direct and
approve, §26-24-109.

Power of commission, §26-24-103.

Consultations with governor,
§26-24-120.

Contempt.

Failure of witness to testify before
commission, §26-24-122.

Corporations.

Information from.

Power of commission to require,
§26-24-111.

Depositions.

Power of commission to cause
deposition of witnesses,
§26-24-113.

Divisions.

Assessment coordinate division,
§26-24-101.

Tax division, §26-24-101.

Equalization.

Appeals, §26-24-123.

Authority, §26-27-201.

Power of commission, §§26-24-102,
26-27-201.

Public carriers.

Tax division.

Duties, §26-24-101.

Public utilities.

Tax division.

Duties, §26-24-101.

State equalization board.

Commission constitutes,
§26-27-201.

Order of adjustment, §26-27-204.

Record of proceedings, §26-27-204.

Rules for valuation, §26-27-203.

Tax division.

Duties, §26-24-101.

Extension of time.

Reports, §26-24-108.

Governor.

Consultations with, §26-24-120.

Hearings.

Public carriers.

Assessment of property,
§26-24-101.

Public utilities.

Assessments of property,
§26-24-101.

Investigations.

Agents.

Appointment, §26-24-114.

PUBLIC SERVICE COMMISSION

—Cont'd

Taxation of property, privileges and franchises —Cont'd

Investigations —Cont'd

Agents —Cont'd

Disclosure of information.

Penalties, §26-24-114.

Notaries public.

Powers given by law to,
§26-24-114.

Penalties.

Disclosure of information,
§26-24-114.

Powers, §26-24-114.

Commission, §26-24-116.

Tax systems, §26-24-119.

Local authorities.

Supervision.

Power and authority, §26-24-105.

Notaries public.

Agents.

Investigations.

Powers given by law to,
§26-24-114.

Omitted property.

Placement upon assessment rolls,
§26-24-117.

Opinions of commission.

Binding effect, §26-24-106.

Power and authority, §26-24-106.

Penalties.

Agents.

Disclosure of information,
§26-24-114.

Powers.

Actions.

Collection of taxes.

Power to direct and approve,
§26-24-109.Assessment of utility property,
§26-24-103.

Basis of valuation, §26-24-104.

Consultation with governor,
§26-24-120.

Depositions.

Power to cause, §26-24-113.

Equalization, §26-27-201.

Generally, §26-24-102.

Information from private persons or
corporations, §26-24-111.Information from public officials,
§26-24-110.Investigations, §§26-24-115,
26-24-116, 26-24-119.

Meetings of assessors.

Power to call, §26-24-118.

PUBLIC SERVICE COMMISSION

—Cont'd

Taxation of property, privileges and franchises —Cont'd

Powers —Cont'd

Omitted property.

Power to cause to be placed upon
assessment rolls, §26-24-117.

Opinions, §26-24-106.

Reports.

Biennial reports, §26-24-121.

Extension of time, §26-24-108.

Rules and regulations, §26-24-107.

Supervision of local authorities,
§26-24-105.

Witnesses, §26-24-113.

Private persons.

Information from.

Power of commission to require,
§26-24-111.

Public carriers.

Appeals.

Assessment of property,
§26-24-101.

Assessment of property.

Appeals, §26-24-101.

Hearings, §26-24-101.

Power of commission, §26-24-103.

Tax division.

Duties, §26-24-101.

Equalization of properties.

Tax division.

Duties, §26-24-101.

Hearings.

Assessment of property,
§26-24-101.

Tax division.

Assessment and equalization of
properties, §26-24-101.

Public officers and employees.

Information.

Power of commission to require,
§26-24-110.

Public utilities.

Appeals.

Assessment of property,
§26-24-101.

Assessment of property.

Power of commission, §26-24-103.

Tax division.

Duties, §26-24-101.

Equalization of properties.

Tax division.

Duties, §26-24-101.

Hearings.

Assessment of property,
§26-24-101.

PUBLIC SERVICE COMMISSION

—Cont'd

Taxation of property, privileges and franchises —Cont'd

Public utilities —Cont'd

Tax division.

Assessment and equalization of properties, §26-24-101.

Reports.

Biennial reports, §26-24-121.

Extension of time, §26-24-108.

Rules and regulations.

Compliance.

Power and authority to require, §26-24-107.

Power and authority, §26-24-107.

State equalization board.

Meetings, §26-27-202.

Supervision of local authorities.

Power and authority, §26-24-105.

Tax division.

Created, §26-24-101.

Duties, §26-24-101.

Public utilities and carriers.

Assessment and equalization of properties.

Duties regarding, §26-24-101.

Responsibility, §26-24-101.

Tax systems.

Investigation of, §26-24-119.

Valuation.

Power of commission, §26-24-102.

Witnesses.

Compelling to testify, §26-24-122.

Contempt.

Disobedience of subpoena, §26-24-122.

Depositions.

Power to cause, §26-24-113.

Exemption from prosecution, §26-24-122.

Fees, §26-24-122.

Perjury.

No exemption from prosecution, §26-24-122.

Powers of commission, §26-24-112.

Depositions, §26-24-113.

Self-incrimination.

Witness not excused from attending or testifying because of, §26-24-122.

Valuation.

Basis of valuation.

Power of commission, §26-24-104.

Power of commission.

Basis of valuation, §26-24-104.

PUBLIC SERVICE COMMISSION

—Cont'd

Witnesses.

Taxation of property, privileges and franchises.

Contempt.

Failure to testify before commission, §26-24-122.

Depositions.

Power of commission to cause deposition of witnesses, §26-24-113.

Exemption from prosecution, §26-24-122.

Failure to testify before commission.

Attachment, §26-24-122.

Contempt, §26-24-122.

Fees, §26-24-122.

Perjury.

No exemption from prosecution, §26-24-122.

Powers of commission, §26-24-112.

PUBLIC UTILITIES.**Property taxes.**

Assessments.

Utilities and carriers, §§26-26-1601 to 26-26-1707.

Public service commission.

Taxation of property, privileges and franchises, §§26-24-101 to 26-24-123.

Public service commission.

Taxation of property, privileges and franchises, §§26-24-101 to 26-24-123.

Taxation.

Public service commission.

Taxation of property, privileges and franchises, §§26-24-101 to 26-24-123.

R**RAILROADS.****Public service commission.**

Taxation of property, privileges and franchises, §§26-24-101 to 26-24-123.

Taxation.

Public service commission.

Taxation of property, privileges and franchises, §§26-24-101 to 26-24-123.

REAL PROPERTY.**Financial institutions.**

Property taxes.

Assessment, §26-26-1504.

RECEIVERS.**Property taxes.**

Assessments.

- Listing property of corporation
whose assets are in hands of
receiver, §26-26-904.

Taxation.

- Appointment, §26-18-703.

RECIPROCITY.**Taxation.**

- Director of department of finance and
administration.
- Reciprocal pacts and agreements,
§§26-17-401 to 26-17-404.
- Finance and administration
department.
- Reciprocal pacts and agreements,
§§26-17-401 to 26-17-404.

RECORDINGS.**Taxpayer bill of rights.**

- Interviews with taxpayers, §26-18-803.

RELIGION.**Property taxes.**

Assessments.

- Property used for other than church
purposes, §26-26-1113.
- Exempt property, §26-3-301.
- Parsonages, §26-3-303.
- Property used for other than church
purposes, §26-3-206.

REPORTS.**Motion pictures.**

Tax incentive.

- Disbursement report, §26-4-208.

Public service commission.

- Taxation of property, privileges and
franchises.
- Biennial reports, §26-24-121.
- Extension of time.
- Power of commission to grant,
§26-24-108.

RIGHT OF ENTRY.**Property taxes.**

Assessments.

- Assessors, §26-26-910.

S**SALES AND USE TAX.****Definitions.**

- Streamlined sales tax administrative
act, §26-21-103.

SALES AND USE TAX —Cont'd**Refund.**

- Streamlined sales tax administrative
act.

- Customer refund procedures,
§26-21-109.

**Streamlined sales and use tax
agreement, §§26-20-101 to
26-20-109.**

- Citation of act, §26-20-101.
- Cooperating sovereigns, §26-20-107.
- Definitions, §26-20-102.
- Effect, §26-20-108.
- Entry into agreement.
- Authorized, §26-20-104.
- Requirements, §26-20-106.
- Legislative declaration, §26-20-103.
- Liability for taxes.
- Seller and third party liability,
§26-20-109.

- Relationship of agreement to state
law, §26-20-105.

- Title of act, §26-20-101.

**Streamlined sales tax administrative
act, §§26-21-101 to 26-21-115.**

- Certification of service providers and
automated systems, §26-21-111.
- Citation of act, §26-21-101.
- Confidentiality and privacy for
consumers dealing with model 1
sellers, §26-21-115.
- Definitions, §26-21-103.
- Exemptions.
- Administration of, §26-21-107.
- Governing board, §26-21-114.
- Immunity from certain liability,
§26-21-106.
- Legislative declaration, §26-21-102.
- Payments, §26-21-108.
- Rate changes.
- Effective date, §26-21-112.

Refunds.

- Customer refund procedures,
§26-21-109.

Registration of sellers.

- Amnesty, §26-21-110.
- Online registration system.
- Participation in, §26-21-104.

Reporting forms, §26-21-108.**Returns, §26-21-108.****Rulemaking, §26-21-113.****Taxing jurisdictions.**

- System for assigning, §26-21-105.

Title of act, §26-21-101.

SALES AND USE TAX —Cont'd**Uniform sales and use tax administration act.**

Streamlined sales and use tax agreement, §§26-20-101 to 26-20-109.

SATURDAYS.**Taxation.**

Last day for performance of act falling on Saturday, §26-18-105.

SAVINGS AND LOAN ASSOCIATIONS.**Property taxes.**

Generally, §§26-26-1501 to 26-26-1505.

SCHOOL DISTRICTS.**Property taxes.**

Adjustment of taxes.

Fringe school districts.

Implementation of millage rollback, §26-26-408.

SCHOOLS AND EDUCATION.**Property taxes.**

Adjustment of taxes.

Fringe school districts.

Implementation of millage rollback, §26-26-408.

Exempt property, §26-3-301.

SECURITIES.**Property taxes.**

Assessments.

Lists.

Property converted into nontaxable securities, §26-26-908.

SENIOR CITIZENS.**Property tax assessments,**

§26-26-1120.

Housing for elderly or individuals with disabilities, §26-26-1206.

Relief, §26-26-1124.

SERVICE OF NOTICE, PROCESS AND OTHER PAPERS.**Property taxes.**

Failure to list and value property.

Civil action in name of state, §26-2-106.

Taxation.

Failure to obey summons.

Felony, §26-18-205.

Powers of director of department of finance and administration, §26-18-305.

SETTLEMENT.**Taxation, §26-18-705.****STATUTE OF LIMITATIONS.****Taxation, §26-18-306.**

Appeal of deficiency assessment, §26-18-406.

STOCK AND STOCKHOLDERS.**Property taxes.**

Assessments.

Lists.

Credits and stocks which need not be listed, §26-26-909.

Statement of capital stock, §26-26-1505.

Notice to file, §26-26-1505.

Penalty for failure to file, §26-26-1505.

Required, §26-26-1505.

Investments in stocks.

Defined, §26-1-101.

Taxable, §26-3-201.

STREAMLINED SALES AND USE TAX AGREEMENT, §§26-20-101 to 26-20-109.**STREAMLINED SALES TAX ADMINISTRATIVE ACT, §§26-21-101 to 26-21-115.****SUBDIVISIONS.****Property taxes.**

Assessments.

Platting subdivisions for assessment purposes, §§26-26-801 to 26-26-804.

SUMMONS.**Property taxes.**

Failure to list and value property.

Civil action in name of state.

Service of summons, §26-2-106.

SUNDAY.**Taxation.**

Last day for performance of act falling on Sunday, §26-18-105.

T**TAX ADMINISTRATION AND COLLECTION.****Actions.**

Finance and administration department.

Director.

Authority to institute and prosecute, §26-17-304.

Assessments, §26-18-401.

Certificates of indebtedness.

Issuance, §26-18-701.

Defined, §26-18-104.

**TAX ADMINISTRATION AND
COLLECTION —Cont'd**

Assessments —Cont'd

- Jeopardy assessment, §26-18-402.
- Limitations on time, §26-18-306.
- Notice.
 - Proposed assessments, §26-18-403.
- Penalties and additions to tax, §26-18-208.
- Proposed assessments, §26-18-403.
 - Hearing on, §26-18-405.
 - Hearing officer, §26-18-405.
 - Request for, §26-18-404.
- Protest by taxpayer, §26-18-404.
- Sale of land for taxes.
 - Tax sold lands assessed in name of purchaser, §26-26-907.
- Transferee liability, §26-18-502.

Certificates of indebtedness.

- Issuance, §26-18-701.

Counties.

- Refusing to pay tax due.
 - Proceedings against localities, §26-18-704.

**Director of department of finance
and administration, §26-18-401.**

- Certificates of indebtedness.
 - Issuance, §26-18-701.
- Collection of revenues.
 - Actions, authorized to institute and prosecute, §26-17-304.
 - Checks not paid for any reason.
 - Duty to collect, §26-17-504.
 - Deposits, §26-17-504.
 - Neglecting or failing to turn over collected revenues to state treasurer, §26-17-501.
 - Not liable for funds not turned into state treasurer, §26-17-501.
 - Remittance of revenues, §26-17-502.
- Collection of taxes, §26-18-401.
- Compromise and settlement, §26-18-705.
- Credit card payment.
 - Authority as to, §26-18-310.
- Decisions of director.
 - Cancellation of license or permit.
 - Judicial review of decision, §§26-18-601, 26-18-602.
 - Defined, §26-18-104.
 - Refund of erroneous payments.
 - Relief from decision of director, §26-18-507.
 - Tax deficiencies.
 - Relief from decisions of director on, §26-18-406.
- Defense of director in civil suit, §26-18-309.

**TAX ADMINISTRATION AND
COLLECTION —Cont'd**

**Director of department of finance
and administration —Cont'd**

- Defined, §26-18-104.
- Disposition of revenues, §26-18-308.
- Duties.
 - Collection of revenues.
 - Deposits and collections, §26-17-504.
 - Remittance of revenues, §26-17-502.
 - Reciprocal pacts and agreements, §26-17-403.
- Electronic tax administration.
 - Powers and duties, §§26-18-311, 26-18-312.
- Enforcement of tax laws, §26-18-301.
- Injunction proceedings.
 - Director authorized to institute, §26-18-702.
- Investigations, §26-18-305.
- Motor vehicles.
 - Collection of license fees, §26-17-302.
- Petroleum products.
 - Inspection of petroleum oils and products and collection of fees, §26-17-303.
- Powers, §26-18-305.
 - Credit card payment, §26-18-310.
 - Electronic funds transfers, §26-19-103.
 - Electronic tax administration policy, §26-18-311.
 - Reciprocal pacts and agreements, §26-17-403.
- Receivers.
 - Appointment by director, §26-18-703.
- Reciprocal pacts and agreements.
 - Authority to enter, §26-17-402.
 - Powers and duties, §26-17-403.
- Records.
 - Custodian, §26-18-303.
 - Microfilming, §26-18-302.
- Revenue division.
 - Personnel.
 - Authority to employ, §26-17-201.
- Rules and regulations, §26-18-302.
 - Electronic funds transfers, §26-19-108.
 - Preservation, §26-18-302.
- Witnesses.
 - Powers as to, §26-18-305.
- Erroneous collection activity.**
 - Claim for damages, §26-18-904.
- Executions, §26-18-701.**

**TAX ADMINISTRATION AND
COLLECTION —Cont'd
Finance and administration
department.**

Actions.

Collection of revenues.

Director authorized to institute
and prosecute, §26-17-304.

Auditors.

Revenue division.

Field auditors.

Qualifications, §26-17-203.

Bonds, surety.

Revenue division.

Deputy commissioners and other
employees, §26-17-204.

Collection of revenues.

Actions.

Director authorized to institute
and prosecute, §26-17-304.

Checks not paid for any reason.

Duty of director to collect,
§26-17-504.

Deposits.

Duty of director, §26-17-504.

Liability of director.

Director liable for funds not
turned into state treasurer,
§26-17-501.

Penalties.

Neglecting or failing to turn over
to state treasurer collected
revenues, §26-17-501.

Remitting revenues.

Daily remittance, §26-17-503.

Duty of director, §26-17-502.

Electronic funds transfers.

Director.

Authority, §26-19-103.

Rules and regulations, §26-19-108.

Motor vehicles.

License fees.

Collection by directors,
§26-17-302.

Petroleum products.

Inspection of petroleum oils and
products and collection of fees.

Director, §26-17-303.

Reciprocal pacts and agreements.

Authority to enter, §26-17-402.

Director.

Authority to enter agreements,
§26-17-402.

Powers and duties, §26-17-403.

Violations of provisions of
subchapter, §26-17-401.

Aiding and abetting another in
violation of tax laws,
§26-17-404.

**TAX ADMINISTRATION AND
COLLECTION —Cont'd
Finance and administration
department —Cont'd**

Revenue division.

Attorneys for division, §26-17-202.

Auditors.

Field auditors.

Qualifications, §26-17-203.

Bonds, surety.

Deputy commissioners and other
employees, §26-17-204.

Performance required, §26-17-301.

Personnel.

Authority to employ, §26-17-201.

Taxpayer bill of rights.

Employees of department.

Civil damages for certain
unauthorized collection
actions, §26-18-809.

Civil damages for failure to
release lien, §26-18-808.

Evaluation, §26-18-805.

Limitations on time, §26-18-306.

Localities.

Proceedings against, §26-18-704.

Municipal corporations.

Refusing to pay tax due.

Proceedings against localities,
§26-18-704.

Political subdivisions.

Refusing to pay tax due.

Proceedings against localities,
§26-18-704.

**Standard of proof for exemptions,
deductions, and credits,
§26-18-313.**

TAXATION.

Accomplices and accessories.

Attempt to evade or defeat tax,
§26-18-209.

Actions.

Closure of noncompliant taxpayer's
business.

Judicial relief, §26-18-1003.

Collection of taxes.

Director of department of finance
and administration.

Authority to institute and
prosecute, §26-17-304.

Corruption in office.

Suit by taxpayer to recover taxes
lost by reason of, §26-2-114.

Defense of director of department of
finance and administration in civil
suit, §26-18-309.

Affidavits.

False affidavits.

Felony, §26-18-204.

TAXATION —Cont'd**Agriculture.**

- Property taxes.
- Assessments, §26-26-1108.

Appeals.

- Cancellation of license or permit, §26-18-602.
- Decisions of director on tax deficiency, §26-18-406.
- Court costs, §26-18-406.
- Tax deficiency.
- Relief from decisions of director on, §26-18-406.

Attempt to evade or defeat tax.

- Accomplice liability, §26-18-209.
- Felony, §26-18-201.

Attorney general.

- Defense of director of department and administration in civil suit, §26-18-309.

Bill of rights of taxpayers,

- §§26-18-801 to 26-18-812.

Bonds, surety.

- Appeals from cancellation of license or permit, §26-18-602.
- Appeals from decisions of director on tax deficiency, §26-18-406.
- Approval by director, §26-18-304.
- Corruption in office.
- Suit by taxpayer to recover taxes lost by reason of.
- Bond of petitioner, §26-2-114.

- Finance and administration department.

- Revenue division.

- Deputy commissioners and other employees, §26-17-204.

Forfeiture.

- Continuance of business or activities after forfeiture of required bond.
- Felony, §26-18-207.

Business closure.

- Noncompliant taxpayer, §§26-18-1001 to 26-18-1006.
- Administrative hearing concerning director's decision, §26-18-1002.
- Administrative procedure act.
- Administrative hearing not subject to, §26-18-1002.
- Appeal from circuit court decision, §26-18-1003.
- Authority of director of department to close, §26-18-1001.
- Avoidance of closure, §26-18-1001.
- Decision to affirm closure determination.
- Delivery to taxpayer, §26-18-1003.
- Defenses to closure, §26-18-1002.

TAXATION —Cont'd**Business closure —Cont'd**

- Noncompliant taxpayer —Cont'd
- Injunction prohibiting further operation of business, §26-18-1003.
- Judicial relief from decision to close, §26-18-1003.
- Noncompliant taxpayer defined, §26-18-104.
- Notice that business will be closed, §26-18-1001.
- Notice to taxpayer that delinquency will result in closure, §26-18-1001.
- Posting notice of closure at place of business, §26-18-1004.
- Procedure for business closure, §26-18-1004.
- Protest filed by noncompliant taxpayer, §26-18-1002.
- Rules, authority to promulgate, §26-18-1006.
- Suspension of business license, §26-18-1005.

Carriers.

- Public service commission.
- Taxation of property, privileges and franchises, §§26-24-101 to 26-24-123.

Citation of tax procedure act,

- §26-18-101.

Comity.

- Taxes imposed by other states, §26-18-707.

Compacts.

- Multistate tax compact, §§26-5-101 to 26-5-108.

Compliance with tax code.

- Failure to correct noncompliance after notification, §26-18-211.

Compromise and settlement.

- Tax procedure act, §26-18-705.

Confidentiality of information.

- Records, §26-18-303.
- Exceptions, §26-18-303.

Construction and interpretation.

- Arkansas tax procedure act, §26-18-103.
- Confidentiality of records.
- Construction of section, §26-18-303.

Corporations.

- Defined, §26-18-104.

Corruption in office.

- Fraudulent statement of accounts.
- Approval of false accounts.
- Removal of county judge, §26-2-112.

TAXATION —Cont'd**Corruption in office —Cont'd**

- Fraudulent statement of accounts —Cont'd
- Removal from office, §26-2-111.
- Prosecution of county officers by state, §26-2-113.
- Recovery of taxes lost by reason of.
 - Suit by taxpayer, §26-2-114.

Costs.

- Court costs in tax cases, §26-18-406.

Counties.

- Refusing to pay tax due.
 - Proceedings against localities, §26-18-704.

Credit cards.

- Payment by credit card.
- Authority of director, §26-18-310.

Criminal proceedings.

- Limitation of prosecutions, §26-18-306.
- Venue of prosecutions, §26-18-210.

Damages.

- Collection of taxes.
 - Erroneous collection activity, §26-18-904.

Definitions, §26-1-101.

- Electronic funds transfers, §26-19-101.
- Motion picture incentive, §26-4-203.
- Multistate tax compact, §26-5-101.
- Tax procedure act, §26-18-104.

Deposits.

- Finance and administration department.
 - Collection of revenues.
 - Duty of director to make daily deposits, §26-17-504.

Disposition of revenues, §26-18-308.**Election of rights and remedies.**

- Multistate tax compact.
 - Reporting on basis of volume in state, §26-5-102.

Electronic funds transfers.

- Applicability of tax procedure act, §26-19-102.
- Defined, §26-19-101.
- Effective dates of provisions, §26-19-104.
- Finance and administration department.
 - Director.
 - Authority, §26-19-103.
 - Rules and regulations, §26-19-108.
- Payment of taxes, §26-19-105.
 - Corporations, §26-19-106.
 - Penalties for violations of requirements, §26-19-107.

TAXATION —Cont'd**Electronic tax administration policy, §26-18-311.**

- Signatures on electronic forms, §26-18-312.

Employee evaluation criteria, §26-18-903.**Evasion of taxes.**

- Accomplice liability, §26-18-209.
- Felony, §26-18-201.

Executions.

- Collection of delinquent taxes, §26-18-701.

Fiduciaries.

- Defined, §26-18-104.
- Final account, §26-18-504.

Final assessment, §26-18-401.

- Appeal of, §26-18-406.

Forms.

- Multistate tax compact.
- Authorized forms, §26-5-108.

Franchises.

- Public service commission.
 - Taxation of property, privileges and franchises, §§26-24-101 to 26-24-123.

Fraud.

- False or fraudulent reports or returns.
 - Felony, §26-18-203.

Greenbelt law, §26-26-1108.**Hearings.**

- Business closure, noncompliant taxpayer.
 - Administrative hearing, §26-18-1002.
- Cancellation of license or permit, §26-18-601.
- Jeopardy assessment, §26-18-402.
- Proposed assessments, §§26-18-404, 26-18-405.

Holidays.

- Last day for performance of act falling on legal holiday, §26-18-105.

Husband and wife.

- Spousal relief, §26-18-708.

Injunctions.

- No injunction to stay proceedings for assessment or collection of taxes, §26-18-406.
- Proceedings, §26-18-702.
- Violations of state tax laws.
 - Director of department of finance and administration may seek injunction, §26-18-601.
- Violations of tax laws.
 - Director of department of finance and administration may seek injunction, §26-18-601.

TAXATION —Cont'd**Interest.**

- Extension of time for payment.
- Tax not paid when due because of extension, §26-18-505.
- Overpayments, §26-18-508.
- Tax deficiencies, §26-18-508.

Investigations.

- Director of department of finance and administration, §26-18-305.
- Powers of director of department of finance and administration, §26-18-305.

Jeopardy assessment, §26-18-402.**Licenses.**

- Cancellation, §26-18-601.
- Judicial review, §26-18-602.
- Conduct of business or activities without license.
- Misdemeanor, §26-18-206.
- Refusal, §26-18-601.

Limitation of actions.

- Appeal of deficiency assessment, §26-18-406.

- Tax procedure act, §26-18-306.

Mail box rule, §26-18-105.**Motion pictures.**

- Tax incentive, §§26-4-201 to 26-4-213.

Multistate tax compact.

- Advisory committee, §26-5-104.
- Composition, §26-5-104.
- Duties, §26-5-104.
- Established, §26-5-104.
- Meetings, §26-5-104.
- Procedures, §26-5-107.

- Attorney of revenue division.

- Legal counsel, §26-5-106.

Audits.

- Interstate audits, §26-5-101.

- Commission, §26-5-101.

- Definitions, §26-5-101.

- Director of department of finance and administration.

- State representatives, §26-5-103.

- Election of taxpayer to report on basis of percentage of volume in state, §26-5-102.

- Enactment, §26-5-101.

Forms.

- Authorized forms, §26-5-108.

- General provisions, §26-5-101.

Governor.

- Local government committee.

- Appointment by governor, §26-5-105.

- Legal counsel, §26-5-106.

- Local government committee.

- Appointment by governor, §26-5-105.

TAXATION —Cont'd**Multistate tax compact —Cont'd****State representatives.**

- Director of department of finance and administration, §26-5-103.

- Text, §26-5-101.

Municipalities.

- Refusing to pay tax due.

- Proceedings against localities, §26-18-704.

Notice.**Assessments.**

- Proposed assessments, §26-18-403.

- Cancellation of license or permit, §26-18-601.

- Closure of noncompliant taxpayer's business, §26-18-1001.

- Jeopardy assessment, §26-18-402.

- Noncompliance with tax code.

- Failure to correct noncompliance after notification, §26-18-211.

- Proposed assessments, §26-18-403.

- Requirements generally, §26-18-307.

Returns.

- Failure to file after notification, §26-18-212.

- Temporary suspension of license or permit, §26-18-601.

Oaths.

- Director of department of finance and administration.

- Administration of oaths, §26-18-305.

Office of problems resolution and tax information.

- Creation, §26-18-901.

- Rulemaking authority, §26-18-901.

Partnerships.

- Defined, §26-18-104.

Payment of taxes.

- Electronic funds transfers, §26-19-105.

- Corporations, §26-19-106.

- Penalties for violations of requirements, §26-19-107.

Erroneous payments.

- Refunds, §26-18-507.

- Liability for payment, §26-18-501.

- Transferee liability, §26-18-502.

Overpayment.

- Defined, §26-18-104.

- Interest, §26-18-508.

- Place for remittance of taxes, §26-18-503.

- Time for remittance of taxes, §26-18-503.

Underpayment.

- Defined, §26-18-104.

- Willful failure to pay.

- Felony, §26-18-202.

TAXATION —Cont'd**Penalties.**

- Assessable penalties and additions to tax, §26-18-208.
- Attempt to evade or defeat tax.
- Accomplice liability, §26-18-209.
- Electronic funds transfers.
- Violations of payment requirements, §26-19-107.
- Finance and administration department.
- Collection of revenues.
- Director neglecting or failing to turn collected taxes to state treasurer, §26-17-501.
- Loaning or using public money by officials, §26-2-103.
- Noncompliance with tax code after notification.
- Failure to correct noncompliance, §26-18-211.
- Reciprocal pacts and agreements.
- Violations of provisions of subchapter, §§26-17-401, 26-17-404.
- Returns.
- Failure to file after notification, §26-18-212.
- Sale of tax forfeited lands.
- County collector purchasing land, §26-2-109.
- Tax procedure act.
- Assessable penalties and additions to tax, §26-18-208.
- Noncompliance with code after notification.
- Failure to correct noncompliance, §26-18-211.
- Returns.
- Failure to file after notification, §26-18-212.

Permits.

- Cancellation, §26-18-601.
- Judicial review, §26-18-602.
- Conduct of business or activities without permit, §26-18-206.
- Refusal, §26-18-601.

Political subdivisions.

- Refusing to pay tax due.
- Proceedings against localities, §26-18-704.

Privilege taxes.

- Public service commission.
- Taxation of property, privileges and franchises, §§26-24-101 to 26-24-123.

TAXATION —Cont'd**Property taxes.**

- Public service commission.
- Taxation of property, privileges and franchises, §§26-24-101 to 26-24-123.

Property taxpayer bill of rights,

§§26-23-201 to 26-23-205.

Public utilities.

- Public service commission.
- Taxation of property, privileges and franchises, §§26-24-101 to 26-24-123.

Purposes of tax procedure act,

§26-18-102.

Receivers.

- Director to appoint, §26-18-703.

Reciprocity.

- Finance and administration department.
- Reciprocal pacts and agreements, §§26-17-401 to 26-17-404.

Records.

- Confidentiality, §26-18-303.
- Director of department of finance and administration.
- Custodian, §26-18-303.
- Microfilming, §26-18-302.
- Taxpayers, §26-18-506.

Refunds.

- Claims.
- Erroneous payments, §26-18-507.
- Limitation on time, §26-18-306.
- Erroneous payments, §26-18-507.

Returns.

- Defined, §26-18-104.
- False or fraudulent returns, §26-18-203.

Time for filing.

Extension, §26-18-505.

Willful failure to file.

Failure to file after notification, §26-18-212.

Felony, §26-18-202.

Rules and regulations.

- Director of department of finance and administration, §26-18-301.
- Electronic funds transfers, §26-19-108.
- Office of problems resolution and tax information.
- Rulemaking authority, §26-18-901.
- Preservation, §26-18-302.
- Preservation of rules and regulations, §26-18-302.

TAXATION —Cont'd**Sale or donation of lands forfeited for taxes.**

Assessments.

Land assessed in name of purchaser, §26-26-907.

Penalties.

Collector purchasing land, §26-2-110.

Saturdays.

Last day for performance of act falling on Saturday, §26-18-105.

Spousal relief, §26-18-708.**Summons and process.**

Failure to obey summons.

Felony, §26-18-205.

Powers of department of finance and administration, §26-18-305.

Sundays.

Last day for performance of act falling on Sunday, §26-18-105.

Tax advisory council, §26-18-902.**Tax deficiencies.**

Certificates of indebtedness.

Issuance, §26-18-701.

Defined, §26-18-104.

Interest, §26-18-508.

Relief from decisions of director on.

Court costs, §26-18-406.

Procedure for perfecting, §26-18-406.

Taxpayer assistance, §§26-18-901 to 26-18-904.

Collection activity.

Erroneous action taken in collection activity.

Claim for damages, §26-18-904.

Employee evaluation criteria, §26-18-903.

Erroneous collection activity.

Claim for damages, §26-18-904.

Job performance criteria, §26-18-903.

Office of problems resolution and tax information.

Creation, §26-18-901.

Rulemaking authority, §26-18-901.

Tax advisory council.

Composition, §26-18-902.

Establishment, §26-18-902.

Reporting requirements, §26-18-902.

Taxpayer bill of rights, §§26-18-801 to 26-18-812.**Taxpayers.**

Defined, §26-18-104.

Records, §26-18-506.

Uniform procedures and remedies.

Purposes of chapter, §26-18-102.

Venue.

Prosecutions.

Where permitted, §26-18-210.

TAXATION —Cont'd**Water supply and waterworks.**

Nonprofit property owners' associations.

Waterworks owned by.

Exemption from property taxes, §26-3-305.

Witnesses.

Powers of director of department of finance and administration as to, §26-18-305.

TAX EXEMPTIONS.**Standard of proof, §26-18-313.****TAX LIENS.****Release of property from lien, §26-18-706.****TAXPAYER BILL OF RIGHTS,**

§§26-18-801 to 26-18-812.

Accountants.

Certified public accountant.

Representation of taxpayers at interviews, §26-18-803.

Additional tax.

Abatement of addition to tax due to erroneous written advice by director, §26-18-804.

Agreements.

Payment of tax liability in installments, §26-18-807.

Appeals.

Administrative appeal of liens, §26-18-811.

Attorneys at law.

Representation of taxpayers at interviews, §26-18-803.

Citation of subchapter, §26-18-801.**Confidentiality of information.**

Preparers of returns.

Disclosure or use of information by preparers.

Penalty, §26-18-810.

Damages.

Departmental employees.

Civil damages for certain unauthorized collection actions, §26-18-809.

Civil damages for failure to release lien, §26-18-808.

Disclosure of rights, §26-18-802.**Finance and administration department.**

Employees.

Civil damages for certain unauthorized collection actions, §26-18-809.

Civil damages for failure to release lien, §26-18-808.

TAXPAYER BILL OF RIGHTS

—Cont'd

Finance and administration department —Cont'd

Employees —Cont'd

Evaluation by director, §26-18-805.

Installment payments.

Agreements for payment of tax liability, §26-18-807.

Interviews with taxpayers.

Procedures, §26-18-803.

Liens.

Administrative appeal, §26-18-811.

Employees of director.

Civil damages for failure to release lien, §26-18-808.

Notice.

Content of tax due, deficiency and other notices, §26-18-806.

Penalties.

Abatement of penalty due to erroneous written advice by director, §26-18-804.

Preparers of returns.

Disclosure or use of information, §26-18-810.

Preparers of returns.

Disclosure or use of information by preparers, §26-18-810.

Recordings.

Interviews with taxpayers, §26-18-803.

Rules and regulations.

Adoption by director, §26-18-812.

Statement of rights.

Distribution to taxpayer, §26-18-802.

Taxpayer assistance.

Generally, §§26-18-901 to 26-18-904.

Title of subchapter, §26-18-801.**TELECOMMUNICATIONS.****Property taxes.**

Assessment of personal property taxes by telephone, §26-26-1114.

Public service commission.

Taxation of property, privileges and franchises, §§26-24-101 to 26-24-123.

Taxation.

Public service commission.

Taxation of property, privileges and franchises, §§26-24-101 to 26-24-123.

TELEVISION.**Cable television.**

Public service commission.

Taxation of property, privileges and franchises, §§26-24-101 to 26-24-123.

TELEVISION —Cont'd**Property taxes.**

Assessments.

Cable television systems, §§26-26-1801 to 26-26-1803.

Public service commission.

Taxation of property, privileges and franchises, §§26-24-101 to 26-24-123.

Taxation.

Public service commission.

Taxation of property, privileges and franchises, §§26-24-101 to 26-24-123.

TEXTILE MILLS.**Property taxes.**

Exemption, §26-3-304.

THIRD PARTIES.**Sales and use taxes.**

Streamlined sales and use tax agreement.

Liability for taxes, §26-20-109.

TRUSTS AND TRUSTEES.**Property taxes.**

Assessments.

Trustee to list property held in trust, §26-26-904.

U**UNIFORM LAWS.****Sales and use taxes.**

Uniform sales and use tax administration act.

Streamlined sales and use tax agreement, §§26-20-101 to 26-20-109.

UNIFORM SALES AND USE TAX ADMINISTRATION ACT.

Streamlined sales and use tax agreement, §§26-20-101 to 26-20-109.

UNITED STATES.**Property taxes.**

Exempt property, §26-3-301.

V**VENUE.****Property taxes.**

Failure to list and value property. Civil action in name of state, §26-2-106.

Taxation.

Prosecutions.

Where permitted, §26-18-210.

VETERANS.**Property taxes.**

Exemptions.

Disabled veterans, §26-3-306.

W**WATER SUPPLY AND****WATERWORKS.****Nonprofit property owners associations.**

Property taxes.

Exemption of waterworks owned by,
§26-3-305.**Property taxes.**Nonprofit property owners
associations.Exemption of waterworks owned by,
§26-3-305.**Public service commission.**Taxation of property, privileges and
franchises, §§26-24-101 to
26-24-123.**Taxation.**Nonprofit property owners
associations.

Waterworks owned by.

Exemption from property taxes,
§26-3-305.

Public service commission.

Taxation of property, privileges and
franchises, §§26-24-101 to
26-24-123.**WITNESSES.****Property taxes.**

Equalization of assessments.

Powers of county equalization
boards, §26-27-316.**Public service commission.**Taxation of property, privileges and
franchises.

Contempt.

Failure to testify before
commission, §26-24-122.

Depositions.

Power of commission to cause
deposition of witnesses,
§26-24-113.Exemption from prosecution,
§26-24-122.

Failure to testify before commission.

Attachment, §26-24-122.

Contempt, §26-24-122.

Fees, §26-24-122.

Perjury.

No exemption from prosecution,
§26-24-122.

Powers of commission, §26-24-112.

Taxation.Director of department of finance and
administration.

Powers as to, §26-18-305.

